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ALEXANDER L. STEVAS,
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Nos. 80-885 and 80-1103

In the Supreme Court of the United States

OCTOBER TERM, 1980

NATIONAL LABOR RELATIONS BOARD,
Petitioner

—*v.*—

HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION

and

MALLEABLE IRON RANGE COMPANY

HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION,
Petitioner

—*v.*—

NATIONAL LABOR RELATIONS BOARD

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SEVENTH CIRCUIT

JOINT APPENDIX

PETITION FOR CERTIORARI IN NO. 80-885 FILED DECEMBER 1, 1980

PETITION FOR CERTIORARI IN NO. 80-1103 FILED JANUARY 3, 1981

CERTIORARI GRANTED MARCH 2, 1981

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CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Case No.: 25-CA-8921

IN THE MATTER OF:
HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION

5.9.77 Charge filed

6.30.77 Complaint and Notice of Hearing, dated

7.7.77 Employer's Answer, dated

7.7.77 Employer's Motion to Dismiss the Complaint, dated

7.13.77 General Counsel's Response in Opposition to Employer's Motion to Dismiss, dated

7.14.77 Order Rescheduling Hearing, dated

7.22.77 Administrative Law Judge's Order denying Employer's Motion to dismiss the Complaint, dated

10.17.77 Order Rescheduling Hearing, dated

12.22.77 Hearing opened

1.9.78 Hearing closed

4.4.78 Administrative Law Judge's Decision issued

5.3.78 Exceptions of Employer to Decision of Administrative Law Judge, received

5.15.78 Employer's Motion to Strike General Counsel's Brief to the Board, dated

7.17.78 Decision and Order issued by the National Labor Relations Board

10.10.79 Board's letter advising the parties that it had decided to accept the remand, and that the parties could file Statements of Position with respect to the issue raised by the remand, dated

11.9.79 General Counsel's Statement of Position, dated

11.12.79 Employer's Statement of Position, dated

1.22.80 Supplemental Decision and Order issued by the National Labor Relations Board

CHRONOLOGICAL LIST OF RELEVANT DOCKET ENTRIES

Case No.: 30-CA-5206

IN THE MATTER OF:
MALLEABLE IRON RANGE COMPANY

30-RC-3482

12.18.78 Petition, dated

12.20.78 Notice of Representation Hearing, dated

12.26.78 Order Rescheduling Hearing, dated

1.8.79 Hearing opened

1.25.79 Hearing closed

1.29.79 Hearing Officer's Report, dated

2.15.79 Union's Brief, received

2.26.79 Employer's Brief to the Regional Director, dated

2.27.79 Decision and Direction of Elections, dated

3.15.79 Employer's Request for Review, dated

3.22.79 Board's teletype denying Employer's Request for Review of Regional Director's Decision and Direction of Election, dated

3.28.79 Notice of Election, held

3.28.79 Tally of Ballots of election, held

3.28.79 Tally of Ballots for Voting Group (B) of election, held

3.28.79 Certification on Conduct of Election, held

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5.8.79 Charge, filed

5.15.79 First Amended Charge

5.17.79 Complaint, dated

5.29.79 Motion to Dismiss Complaint, dated

5.31.79 Notice of Hearing, dated

6.8.79 Answer, dated

6.21.79 Motion for Summary Judgment, dated

6.29.79 Order Transferring Proceeding to the Board and Notice to Show Cause, dated

7.11.79 Motion to Reopen Record to Admit Exhibits as Newly Discovered Evidence, dated

7.11.79 Memorandum in Support of Motion to Reopen Record to Admit Newly Discovered Evidence, dated

7.11.79 Statement in Opposition to Motion for Summary Judgment, dated

7.20.79 General Counsel's Motion in Opposition to Employer's Motion to Reopen Record to Admit Exhibit as Newly Discovered Evidence, dated

8.21.79 Decision and Order issued by the National Labor Relations Board, dated

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGE—

December 22, 1977

Wallace E. Dillon, Witness

DIRECT EXAMINATION

BY MR. HAYES:

* * * *

[6] Q How long have you been General manager?

A For about 14 years.

Q Mr. Dillon, are you in charge of the day-to-day operation of the REMC?

A That is true.

Q Now, throughout my questioning, rather than saying "Hendricks County REMC", I will just refer to it as the "REMC", all right and that's what we're talking about?

A Okay.

Q To whom do you report, Mr. Dillon?

A I report to the Board of Directors.

Q How many such members are there?

A Presently, we have 9.

* * * *

[8] Q Your office clerical employees are represented by a union, correct?

A No, that is incorrect.

Q Strike that. Your Office clerical employees are not represented by a union?

A That's correct.

Q Your outside employees are represented by a union, correct?

A That is correct.

Q And, there is an existing collective bargaining agreement between your company and the union with respect to the outside employees, right?

A Yes.

* * * *

[11] Q Now, what happened to the personnel files, if anything, Mr. Dillon?

A As I stated earlier, I was informed by my assistant, that she came back into the office and picked it up.

Q Where was this file maintained?

A In her office, in her side of the office; we share the same office, with a partition in between.

Q Was she authorized to take that file, Mr. Dillon?

A No, she was not.

JUDGE RIES: Who was your assistant?

THE WITNESS: Pardon?

JUDGE RIES: Who was the assistant who told you that?

THE WITNESS: Wayne Spencer is our assistant manager.

JUDGE RIES: Did Mr. Spencer say he saw her take the personnel file?

THE WITNESS: That I can't say; he informed me that she came back in and told him that she had got her file.

• • • •

[37] Q Isn't it true that Mr. Hadley was a member of Local 1393 of the National Brotherhood of Electrical Workers?

A Yes, that's true.

Q And, this is a local that represents the outside employees at the REMC?

A Yes.

• • • •

CROSS-EXAMINATION

BY MR. OBREMSKY:

• • • •

[74] Q All right. Now, whose responsibility was it to handle insurance claims?

A Basically, it was Mary Mae's.

Q What function or position did she have with the REMC?

A She was my secretary, legal secretary; or, she was my secretary, I'll put it that way.

Q She handled all of your correspondence?

A Yes, except for those periods of time she was on vacation, of course.

• • • •

[82] Q Now, on Monday the 9th, did you receive the form from Dr. Capello?

A Yes, I did.

Q And, about when did you receive it?

A Well, I'm going to say it was probably a little before 10:00 o'clock, because she opened my mail and that's probably when I got around to looking at it.

Q Was it her practice to open all your mail?

A Yes.

Q And then, did she review your mail and—

MR. HAYES: Objection; leading.

BY MR. OBREMSKY:

Q What did she do with the mail after she opened it?

A After she opened it, she usually would write on the department who it was supposed to go to.

[83] Q She would read the mail?

A Yes, I'm assuming, she about had to, which department it would go to.

• • • •

G.C. # 4

BANKERS LIFE COMPANY DES MOINES, IOWA

INSTRUCTIONS TO INSURED

(1) This form is to be filed as soon as it appears that you will qualify for disability benefits.

(2) Complete the Statement of Insured below and Part A on the reverse side. Have your physician complete Part B on the reverse side.

(3) Return form to the Group Policyholder.

STATEMENT OF INSURED

Your name Lloyd Hadley Telephone number 317-745-2962

Your occupation Lineman Date of birth 3/23/24 Social Security No. 311-22-3742

When did you become wholly unable to work? Date February 10, 1976 Hour 10:10 A.M. ~~P.M.~~

Have you been continuously disabled since you became unable to work? ☐ Yes ☒ No

If yes, approximately when do you feel you will be able to resume work?

If no, when did you again become able to work? Date February 28, 1977 Hour A.M. P.M.

Is disability due to ☒ accident or ☐ sickness. (If accident, describe, including date and place. If sickness, when did symptoms first appear?) 2/10/76 - Southeast of Bainbridge, pole # N-102 1/2L-91R-128R-25, Came in contact with 7200 volts.

Have you been hospital confined? ☐ Yes ☐ No. If yes, when? From Feb. 10, 1976 to April 26, 1976 ~~June 19, 1976~~ To ~~September 10, 1976~~

Name of hospital Indiana University Hospital, Address 1100 West Michigan, Indianapolis, Indiana

Did disability result from employment? ☒ Yes ☐ No

If yes, give amount of benefit you are receiving from Workman's Compensation $90.00 weekly

Do you have disability insurance with other companies? ☐ Yes ☒ No. If yes, give names of companies and policy numbers:

Your doctors during the past year ▼	Sickness or Injury ▼	Date Consulted ▼
William Capello, M.D.	Injury	2/10/76 thru now

These statements are true and complete to the best of my knowledge. I authorize any insurer, physician, or hospital to disclose any information regarding my insurance coverage or medical history.

Date 3/30/77 Signature of Insured X Lloyd Hadley

Address of Insured 172 South Road 225 East, Danville, Indiana 46122
Street Town State Zip Code

STATEMENT OF GROUP POLICYHOLDER

Cert. # 13

Insured's Name Lloyd Hadley I.D. No. 311-22-3742 Unit or Div. No. 12

Insurance Class 1-B-70 Eff. Date of Insurance 6/29/64 Eff. Date of Last Change 7/1/76

Was Insured in your employ when disability began? ☒ Yes ☐ No Date Insured Entered Employment 12/1/61

Was insurance in force when disability began? ☒ Yes ☐ No Date Insured last worked 2/10/76

Is Insured's insurance still in force? ☒ Yes ☐ No If no, give date of termination

Has insured returned to work? ☐ Yes ☒ No If yes, give date he returned

Type of Benefit ☒ Monthly Income ☒ Weekly Income ☒ Waiver of Life Premium LTD-X

Insured's Salary: Weekly $ 292.00 or Monthly $ Amount of Benefit Claimed $ 70.00 ~~$ 126/week~~

Group Policyholder Indiana Statewide REC., Inc. Account No.

Date 3/30/77 By [signature] (Signature) Title Manager

...CASE (for INFORMATION): I hereby authorize the undersigned Physician to release any information acquired in the course of my examination or treatment.

SIGNED (PATIENT OR PARENT IF MINOR) Lloyd Hadley DATE 4/30/77

PART B — ATTENDING PHYSICIAN'S STATEMENT

1. **HISTORY**
   - (a) When did symptoms first appear or accident happen? .... Mo. 2 Day 10 19 76
   - (b) Date patient ceased work because of disability? ..... Mo. 2 Day 10 19 76
   - (c) Has patient ever had same or similar condition? ..... Yes ☐ No ☑ *If "Yes" state when and describe* ..
   - (d) Is condition due to injury or sickness arising out of patient's employment? Yes ☑ No ☐ Unknown ☐
   - (e) Names and addresses of other treating physicians .....

NATIONAL LABOR RELATIONS BOARD
Docket No. 8931 OFFICIAL EXHIBIT NO. GC-24
In the matter of
Date 5-12-77 Witness Reporter CC
No. Pages
Disposition: Identified ✓ Received ✓ Rejected

2. **DIAGNOSIS (including any complications)**
   - (a) Diagnosis (including any complications) stiff · (L) Knee
   - (b) Subjective symptoms .....
   - (c) Objective findings (including current X-rays, EKG's, Laboratory Data and any clinical findings)

3. **DATES OF TREATMENT**
   - (a) Date of first visit ..... Mo. 6 Day 19 19 76
   - (b) Date of last visit ..... Mo. 5 Day 10 19 77
   - (c) Frequency ..... Weekly ☐ Monthly ☐ Other (Specify) ☐

4. **NATURE OF TREATMENT (including Surgery and medications prescribed, if any)**
   6-19-76 surgery
   6-24-76 Sutures
   5-10-77 office visit

5. **PROGRESS**
   - (a) Has patient ..... Recovered? ☐ Improved? ☐ Unchanged? ☐ Retrogressed? ☐
   - (b) Is patient ..... Ambulatory? ☑ House confined? ☐ Bed confined? ☐ Hospital confined? ☐
   - (c) Has patient been hospital confined? Yes ☑ No ☐ If yes, give Name and Address of Hospital University Confined from ____ through ____

6. **CARDIAC (If Applicable)**
   - (a) Functional capacity (American Heart Ass'n.) ..... Class 1 (No limitation) ☐ Class 2 (Slight limitation) ☐ Class 3 (Marked limitation) ☐ Class 4 (Complete limitation) ☐
   - (b) Blood Pressure (last visit) ..... ____ / ____ SYSTOLIC / DIASTOLIC

7. **PROGNOSIS**

	PATIENT'S JOB	ANY OTHER WORK
(a) Is patient now totally disabled?	☑ Yes ☐ No	☐ Yes ☑ No
(b) What duties of patient's job is he/she incapable of performing?		
Do you expect a fundamental or marked change in the future?	☐ Yes ☑ No	☐ Yes ☐ No
(1) If yes, when will patient recover sufficiently to perform duties?	☐ ____ / ____ / ____ ☐ 1 mo. ☐ 3-6 mo. ☐ 1-3 mo. ☐ Never	☐ ____ / ____ / ____ ☐ 1 mo. ☐ 3-6 mo. ☐ 1-3 mo. ☐ Never
Remarks ____		
(2) If no, please explain		

Date 5-12-77 Signature

EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE ADMINISTRATIVE LAW JUDGE— January 9, 1978

Mary Weatherman, Witness

DIRECT EXAMINATION

BY MR. HAYES:

* * * *

[6] Q And who all was present at that meeting?

A My husband, myself and Mr. Lydick.

Q Who arranged the meeting?

A My husband.

Q Why didn't you arrange the meeting, Mrs. Weatherman?

A Because I was afraid if Mr. Dillon found out that I had arranged the meeting that he would fire me.

* * * *

[13] JUDGE RIES: Why did you say that?

MS. WEATHERMAN: Because after the lawyer and Mr. Dillon had gotten together reports on Lloyd to take to present before the Board of Directors, when I got Board Meeting Minutes ready which we usually did on a Friday, I asked Mr. Dillon if he had other papers he wanted to go out with the Board Meeting Minutes to the Directors.

* * * *

[16] Q I believe you testified that you placed two phone calls to Lloyd Hadley on May 5th, 1977?

A Yes.

Q Was it as Mr. Dillon's secretary? Did you routinely place calls to Mr. Dillon?

A No, sir. Normally he placed his own calls.

Q Mrs. Weatherman, directing your attention to May 9th, 1977, what time did you report to work on that date?

A Eight o'clock.

Q Is that your normal starting time?

A Yes, sir.

Q What work task, chores did you perform on that date?

A Well, it's my duty to answer the phone. So, I took all phone calls that came in that morning, opened the mail, put the mail on Mr. Dillon's desk and then I typed the agenda for the board meeting and I believe I typed the roll call for the board meeting and I did some other clerical work for Mr. Dillon that morning.

* * * *

CROSS-EXAMINATION

BY MR. OBREMSKY:

* * * *

[23] Q Mrs. Weatherman, you indicated that you were employed by the REMC for approximately nine years, is that correct?

A That's correct.

Q How much of that time were you Mr. Dillon's personal secretary?

A I believe I became Mr. Dillon's secretary in January of 1973.

Q Now, will you describe for us, please, the office arrangement there at Hendricks County, REMC, where you sat and where Mr. Dillon sat?

A Yes. We shared an office with a petition [*sic*] between us.

Q All right. And your desk was on one side of the petition and his desk was on the other?

A Yes.

Q How high was the petition?

[24] A I would say it was about six feet.

Q It did not go to the ceiling in any event?

A No.

Q And there was an entranceway between the two of them so that you could walk from where his desk was to where your desk was, is that correct?

A Yes.

Q And you could hear conversations that took place in his office?

A Very seldom.

Q Pardon?

A Very seldom.

Q And he could hear conversations that took place in your office?

A I don't know what he could hear from my office.

Q All right. Any event when Mr. Dillon made phone calls you could hear what he talked about?

A Not usually.

Q What do you mean "not usually"?

A Because Mr. Dillon talked very low. The only conversations I would hear on his phone was if it was like a big complaint where he was angry with someone where he talked in a louder tone of voice.

* * * *

[25] Q Now, where were the personnel files of the respective employees kept?

A As far as I know there are no personnel files.

Q Well, how about the files that the insurance material [26] was kept in and all the records that the REMC had for each individual employee? Where were they kept?

A There are no records for each individual employee. I kept insurance records on the employees that did file insurance claims but only on the ones that filed insurance claims. There was no record for every employee.

Q And they were kept in your office?

A Yes.

Q And that was part of your responsibility as Mr. Dillon's secretary?

A Yes.

Q Now, did you type all of Mr. Dillon's letters?

A Yes.

Q How did he do that? Did he dictate them to you or did he write them out longhand and then you typed them?

A He wrote them in longhand or sometimes he would tell me what to write in a letter and from memory I typed the letter.

Q All right. He would just tell you generally what he needed and you would go ahead and type the letter up?

A Yes.

Q Did you handle his appointments?

A No, sir.

Q Did you keep an appointment book for him?

A Not as such. He did not tell me about his appointments. [27] The only way I could keep track of his appointments was from an Indiana statewide paper that was printed and from that paper I could tell when the meetings were.

JUDGE RIES: What sort of meetings are those? You mean board of directors meetings?

MS. WEATHERMAN: No. They were meetings that would be Indiana statewide for managers, managers meetings and such and usually the president of the board of directors.

JUDGE RIES: The only thing you knew about his appointments were what you read in the newspapers?

MS. WEATHERMAN: Yes. Mr. Dillon did not keep me informed of all of his appointments. If he was going to Pete's office he usually didn't tell me until he got ready to leave the office or maybe that morning. I didn't know, like a week ahead of time.

MR. HAYES: Your Honor, may I address the Court? I think it would be necessary on the record to clarify who Pete is.

MS. WEATHERMAN: Pete Obremskey, the attorney for REMC.

JUDGE RIES: All right.

BY MR. OBREMSKEY:

Q Now, with regard to the board minutes, was your responsibility to type the board of directors minutes?

A Yes. I typed the board minutes from a draft that came from your office.

[28] Q All right. And you also prepared the agenda for the board of directors?

A Yes.

Q That Mr. Dillon told you—

A Mr. Dillon wrote it out in longhand and I then typed the agenda.

Q All right. It was also your responsibility to send out notices of the board of directors meeting?

A Yes.

Q And from these minutes you determined that the board of directors was considering what it should do with Mr. Hadley?

A No, sir, it was not.

Q Oh. Where did you get this information?

A Lloyd and I were good friends and Lloyd had told me that he had not been contacted by any member of the board of directors or by Mr. Dillon and I asked Mr. Dillon at one time if he had ever been out to Lloyd's house to see what Lloyd could do as a productive employee and he said no, he had not. And I informed him at that time that he had rebuilt the transmission on my car and he also does beautiful woodwork.

Q You were aware, were you not, that the board of directors had appointed a committee to investigate what would be in the best interest of Mr. Hadley as a result of [29] his injury?

A Yes.

Q And when did you first become aware of that?

A That would have been from the board meeting minutes.

Q All right. And that would have been when?

A It was the March meeting. They were in the meeting.

Q Are you sure it was the March meeting?

A Well, I can't be certain, no, but I believe it was the March meeting that the committee was appointed to meet for the March meeting.

• • • •

Q Do you recognize those minutes as minutes that you typed for the February 8th, 1977 Board of Directors [30] Minutes?

A Yes, I would say I did. There is no initial on them but I would say that I did.

Q Okay. And do those minutes contain a reference to a committee being appointed concerning Mr. Hadley?

A Yes, they do.

* * * *

[31] Q Now, Mary Mae, in your job you were responsible for all insurance claims, were you not?

A Medical claims, yes. Medical insurance claims.

Q And you worked on these for all the employees?

A Yes.

Q And you worked in conjunction with Mr. Dillon in processing the forms and making sure that the employees received the proper insurance benefits?

A Yes.

* * * *

[32] Q Mr. Dillon was the principal operating officer of the REMC, is that correct?

A Yes. He was general manager.

Q And had general responsibility for all of the labor relations of all of the employees, Union employees as well as those in the office?

A Yes.

Q And did you write letters written by Mr. Dillon to myself and to others relating to the labor relations with the Labor Union?

A No, sir. The only time I would have written a letter to you would have been concerning that they were having a meeting or negotiations for such as to give you a date or something of this sort. But to my knowledge your office handled all correspondence to the Union people.

Q All right. And copies of that correspondence came to your office?

A I never saw copies of that.

Q All right. I thought you indicated you opened up all the mail.

A I did not open all mail. Some mail was pulled out before it ever crossed my desk and was given directly to Mr. Dillon.

Q Do you know who did that?

[33] A Mr. Douglas.

* * * *

[37] Q Were you aware that Mr. Lydick was chairman of the committee to investigate Mr. Hadley's accident?

A I didn't realize it until that night and he told us he was chairman on that committee.

Q Why did you pick out Mr. Lydick to go see?

A Because Mr. Lydick is the director of my and my husband's area.

* * * *

[39] Q And you were the one that was responsible for making sure that the insurance forms, et cetera, were properly handled?

A Yes, with Mr. Dillon's help.

* * * *

[46] Q You removed your personnal [*sic*] file?

A My personnal file.

Q And is that the same sort of personnal file that's kept for every REMC employee?

A Only if they have an insurance claim.

Q But it was the only file the REMC had on you as far as you know?

A I don't know about any other files. I only know about the insurance file that I kept and these files were set up by myself for my own personal help in determining a claim. When someone came in with a claim, if it

was a previous illness for a year you could use the same claim number. In the past, up until the time that I took care of these forms, they always threw this information away or gave it back to the employee. I set up the file for my own benefit because it was helpful to me. It wasn't something the company told me to set up or it wasn't something Mr. Dillon asked me to set up and at the end of the year these records were of no value to anybody because you had to fill out doctor's forms at the first of the year to establish new claim numbers.

JUDGE RIES: Did these contain strictly medical papers?

MS. WEATHERMAN: Yes. Just copies. When someone got a check back from the insurance company it was just a copy stating how much the check was with a claim number on it.

• • • •

REDIRECT EXAMINATION

BY MR. HAYES:

• • • •

[55] Q Mrs. Weatherman, while you were employed at the REMC did you participate or assist in handling grievances under the Union contract between the REMC and the outside employees?

A No, sir.

Q While you were employed at the REMC did you participate or assist in the negotiation of the existing Collective Bargaining Agreement between the outside [56] employees and the REMC?

A No, sir, I never did.

Q While you were an employee of the REMC did you participate or assist in decisions by management to discipline employees?

A No, sir.

Q How about decisions by management to reward employees if employees were ever rewarded for outstanding service or such?

A No, sir, I never did.

Q While you were an employee of the REMC did you participate or assist in the decision to hire or fire employees?

A No, sir.

JUDGE RIES: I would like to get some clarification of these verbs that you're using. "Assist," "participate in or assist." I take it you are including any possible clerical duties that she may have performed? Is that what you're including?

MR. HAYES: Your Honor, I would represent to the Court that, yes, she—I am not asking her if she participated in a decision as such but whether or not Mrs. Weatherman sat in, took notes, made notes to file, et cetera. And she said the clerical duties that would be necessary to record the labor policies or labor relations [57] between Mr. Dillon and his employees.

JUDGE RIES: Is that the way you understood his previous questions, along this line?

MS. WEATHERMAN: Yes.

MR. OBREMSKEY: Well, as I understand the question was asked: Did she assist or participate in the action itself.

JUDGE RIES: Yes, that's what it sounded like to me. I could see a case for saying that the witness understood she was not a policy maker and therefore she construed the question to refer only to the framework of her own type of duties.

MR. OBREMSKEY: Right.

JUDGE RIES: But I wanted to clarify that for the record and the witness says that that's the way she understood the question.

MR. OBREMSKEY: All right.

JUDGE RIES: So, I don't see any point in asking all of those questions again. So I think we can proceed.

BY MR. HAYES:

Q Mrs. Weatherman, while you were an employee of the REMC did you ever correspond or take corres-

pondence for Mr. Dillon that was intended to be sent to the National Labor Relations Board?

A No, sir.

[58] Q While you were an employee of the REMC, Mrs. Weatherman, were you actually physically present at any board meetings, REMC Board Meeting?

A No, sir.

Q While you were an employee of the REMC, Mrs. Weatherman, were you actually physically present during any possible management meetings excluding the board of directors? I'm referring now to Mr. Dillon, Mr. Douglas, Mr. Spencer and other line management people at the REMC.

A The only management meeting I ever attended was the one previous to the annual meeting.

Q What year are we talking about?

A There is an annual meeting each year. And I would sit in on that meeting just before the annual meeting for the purpose of getting together who was going to do what, who was going to set up chairs at the annual meeting, who was going to order sandwiches and so forth like this.

But as far as any management meetings, I never did.

Q Mrs. Weatherman, while you were an employee of the REMC did you ever type or handle interoffice memos with regard to labor policies?

A No, sir.

Q Do you take dictation?

A No, sir, I do not.

Q Was it a practice of Mr. Dillon's to have you take [59] or type memos regarding phone calls that he had received?

A No.

Q Was it a practice of Mr. Dillon's to have you place calls or contact members of the REMC Board of Directors for business purposes?

A No, sir, never for business.

Q You say never?

A Never for business. The only time he ever asked me to call the board of directors was if a board of director was in the hospital or a board of director had passed away, something to that effect, and he would ask me to notify each board of director.

Q Mrs. Weatherman, did you maintain payroll files as an employee of the REMC?

A No. I have nothing to do with payroll files.

Q Mrs. Weatherman, did there exist at the REMC while you were employed there a labor relations file as such?

A I never saw one.

Q Were you bonded while you were an employee of the REMC?

A No.

Q You testified a moment ago, Mrs. Weatherman, that you did not participate or assist in the handling of grievances between the outside employees under the Union contract.

[60] A Yes.

Q Are you aware of how those grievances were handled?

How they came to the attention of management?

A I believe there was a Union representative who probably talked to Mr. Spencer and Mr. Spencer, in turn, got with Mr. Dillon and then they set up a hearing in the conference room between the Union and management.

Q I believe you testified when Mr. Obremskey had you on the stand that you had some knowledge of labor relations matters. Is that a fair—

A No. I have never had anything to do with labor grievances or the Union.

Q Mrs. Weatherman, are you aware of whether or not the REMC has a labor relations attorney?

A It would be Mr. Obremskey if they have a labor relations attorney.

Q Are you aware, Mrs. Weatherman, of how Mr. Dillon would communicate with Mr. Obremskey concerning labor relations matters?

A Yes. He normally calls him on the phone.

• • • •

[64] QUESTIONS BY JUDGE RIES

Q On the day that this incident occurred with the forms relating to Mr. Hadley prior to the time that you were fired and you finally told Mr. Dillon that the original of that form that you thought had been sent to Lloyd was, in fact, enclosed in the file folder, what was his reaction at that point?

A Well, I think he thought I had intentionally held the form back for some reason.

• • • •

Wayne Spencer, Witness

DIRECT EXAMINATION

BY MR. OBREMSKY:

• • • •

[83] Q Now, who was responsible in the REMC for formulating [84] management policies with regard to labor relations?

A Wallie Dillon.

Q Who was the one that determined management policy concerning interpretations of the Labor Contract with the IBEW?

A Basically it could come through me first with the approval of Wallie Dillon. I would have to say that Wallie was.

Q Who would make the final decision?

A Wallie Dillon.

Q Who carried out and effectuated these management policies?

A Wallie Dillon or if he would ask me to then I would do so.

Q Now, in his absence on vacation or illness or whatever, who was responsible, then, for the day-to-day operation of the REMC?

A Basically I was to a certain degree.

Q All right. And what contact during those periods of time did you have with Mrs. Weatherman?

A I would have to contact Mary Mae for any policies or files that he might have, such as reports that we would have to the Public Service Commission. She would show me the forms and assist me in filling those out.

• • • •

[85] A She would assist me as far as bringing me up to date on the mail, the past mail that he had which I had no way of knowing from day to day operations what he would do with it.

She would assist me in that.

Q And how would she assist you?

A More or less determined the junk mail from every day procedure, what was important and what wasn't.

Q And how would she bring you up to date as to what was important?

A She would open the letters and bring them to my attention. Normally, we would go into his office and she would inform me on the proceedings of that mail as he, in the past, would distribute it.

• • • •

[86] Q During the time you were an acting manager of the REMC did she type your correspondence for you?

A Yes, she did.

Q What did she do for you during this period of time?

A She would make out the agendas, any reports that we had to make out that are every-day operation.

Q What sort of reports were those?

A They had reports that went to Stanley Consultants. We had reports monthly that went to the Public Service Commission. Various communications pertaining to the business.

Q Now, who are Stanley Consultants?

A Stanley Consultants are consulting engineers. Muscatine, Iowa; the engineer of the city.

Q During these periods of time did she open the mail for you?

A Basically she would open the mail that was directed back to that office.

• • • •

[88] Q How well versed was Mary Mae Weatherman in the management function that Mr. Dillon was performing?

A I think she knew his routine of business and particularly the people that we had negotiated with and delt with every day. I think she knew his procedures of handling that business and that's what we tried to—I tried to stay within that same procedure.

• • • •

Wallace E. Dillon, Witness

DIRECT EXAMINATION

BY MR. OBREMSKY:

• • • •

[96] Q What are your business duties and responsibilities as manager of the REMC?

A Well, I have the jurisdiction of all the operations of the REMC; then assisted by my staff people.

• • • •

[104] Q Any other files on your side of the desk pertaining to personnel particularly? On your side of the partition, rather.

A No, not pertaining to personnel. There were other files. Maybe I misunderstood the question.

There were other files, contracts, estimates on construction and etc.

Q All right. Bids received from other—Bids, were bids over there?

A Yes. And estimates.

Q Now, did the Board of Directors as a result of Lloyd Hadley's accident appoint a committee to investigate that matter?

A Yes, they did.

Q And did that committee prepare reports?

A Yes.

Q And what file were these reports kept in?

A It was kept at my desk. That report was given to me by Mr. Krebs and I kept it at my desk.

* * * *

[108] Q And on what side of the partition did you keep your file relating to labor negotiations?

A It was on my side of the partition behind my desk in the little, short drawer.

Q In regard to these labor negotiations, did you attend them?

A Yes.

Q And what function did you perform in the labor negotiations?

A Very little. I participated in the labor negotiations very little, other than if someone would request certain data I would usually secure it for them.

Q By that "someone" you mean whom?

A Well, you or the Board of Directors or the union representatives.

Q And where did you get that data from?

A I would usually have to get it from the files up in our front office. Right now that was files in the front or in the safe on pension programs, health insurance, and then possibly they were some in my file behind my desk.

Q All right. Now, when you are hiring employees, who interviews employees?

A Generally the staff person whose department is in need of a new employee, he'll interview the employee along with me.

[109] Q In your office?

A Well, usually we go to the conference room.

Q All right. And who fires employees?

A I have the responsibility and my staff people has that jurisdiction. Instead of responsibility, I have the jurisdiction and so do my staff people.

Q With regard to these labor relations, who formulates the management policy to carry out the labor management relations?

A The Board of Directors.

Q All right. And do they delegate responsibility to you in this regard?

A Yes, they do.

Q And what responsibility is that?

A They make the policies and they direct me to fulfill their responsibilities.

Q Do you have any function in interpreting the labor contracts and labor relations among employees?

A No.

MR. HAYES: Objection, Your Honor. He's leading the witness all over the place and General Counsel would like to make—

MR. OBREMSKEY: I'll strike the question if it's upsetting you to save a speech.

BY MR. OBREMSKEY:

[110] Q All right. What functions do you have in regard to the individual problems that may be created with people in the office, clerical force or the outside force?

A I'm sorry. I didn't catch that.

Q What function do you perform with regard to labor relations problems with the clerical people or with the outside people?

A Usually if there is any problems it is first taken up by my staff people, Mr. Spencer and Mr. Douglas.

If they cannot get them ironed out then they come to me and we jointly clear the situation.

Q And where do these conversations take place?

A Usually we go to the conference room because there is ample room there, seating capacity and tables.

* * * *

CROSS-EXAMINATION

BY MR. HAYES:

* * * *

[112] Q Now, you testified that you participated very little in labor negotiations, is that correct?

A That is true. I'll clarify that. I attended the meetings but I participated very little.

Q In the actual negotiations for the contract?

A Yes.

[113] Q Who did the main negotiating for the REMC for the union contract?

A Mr. Obremskey. And I may add, also Mr. Krebs.

Q The two lawyers?

A Yes.

Q Now, Mr. Krebs and Mr. Obremskey, let me get this straight, they are being retained by the Hendricks County REMC?

A Yes, that's true.

Q Okay. Now, not by you?

A No.

Q And you testified that the Board of Directors formulates the labor relations policies, isn't that true?

A Yes, that's true. Well, let me clarify it.

After negotiations then it is discussed at the board meetings. Then the board meetings of the Board of Directors either approve or disapprove all of the negotiations.

If they approve them then they are handed down to me to carry out.

Q Do you know what the word "formulate" means, Mr. Dillon?

A Well, I probably know. I don't know whether I do or not.

Q Somebody or some person has an idea of how they want things to be. Do you understand "formulate" to mean that?

A Yeah.

Q Let's put it this way, Mr. Dillon: Do you have a vote on [114] the Board of Directors?

A No, sir, I do not.

Q So, it's not correct to say that you make the labor policies at the REMC?

A No, sir, I do not.

Q I'm using the word "make" instead of "formulate."

A I do not. I understand them both to mean the same.

Q You do not, is that your answer?

A That is true.

Q You testified earlier, Mr. Dillon that Mary Mae Weatherman had access to the safe, isn't that right?

A Pardon?

Q You testified earlier that Mary Weatherman had access to the safe at the REMC?

A Yes.

Q Isn't it true that there is more than one safe?

A Yes, there is.

Q How many safes are there?

A We have one walk-in and two smaller safes.

Q Now, Mary Weatherman, of course, isn't the only one that has access to the safe?

A No, she is not.

Q What safe does she have access to?

A She had access to all of them.

Q Okay. To all of them. She's not the only clerical [115] employee that has access to all of the safes?

A No, she is not.

Q Mr. Dillon, if the Hendricks County REMC—It's more like a co-operative, isn't it?

A That's what it is.

Q Oh, it is? Okay. People work together?

A That's right.

Q And the clerical services are for the benefit of all, right?

A Clerical services are provided by the REMC for the benefit of all the members of the corporation.

Q So, you've got nothing to hide from the members of the corporation, do you?

A No, sir.

Q Why, then, Mr. Dillon, did you talk so much with Mr. Obremskey on direct examination about so-called private papers or secret papers?

A I didn't realize that I did talk about secret papers.

Q Or confidential papers.

A I didn't know as I—

Q Okay. So there aren't, there are really no secret papers as such?

A No.

Q No papers that would damage the REMC such as a secret classified document?

[116] A No.

MR. HAYES: Just a minute, Your Honor. I think I'm ready to finish up. I have to look at my notes here for a minute to make sure I haven't missed anything.

JUDGE RIES: Okay.

MR. HAYES: Bare with me one moment.

BY MR. HAYES:

Q I just want to make one thing perfectly clear, as the saying goes, Mr. Dillon.

The Hendricks County Board of Directors, of which body you do not have a vote, formulates or makes labor relations policies for the REMC, correct?

A Yes. They approve—

Q Just answer my question.

A They approve them after they're negotiated.

Q No, that wasn't the question.

A Okay.

Q The question was: Them come up with the ideas as to how they want their labor policies to be at the REMC?

A Yes, they do.

MR. HAYES: Okay. No further questions.

MR. OBREMSKEY: Your Honor, do you have a question?

JUDGE RIES: Go ahead. Maybe you'll get it answered.

REDIRECT EXAMINATION

BY MR. OBREMSKEY:

[117] Q All right. In labor negotiations, Mr. Dillon, you indicated that Mr. Krebs and I do the actual negotiating with the union, is that correct?

A That's true.

Q Now, are there other meetings outside of the presence of the Union?

A Yes.

Q And who is in those meetings?

A The executive board. They meet with you and Mr. Krebs and that is, they instruct you how to negotiate.

Q Are you present at those meetings?

A Yes, I am.

Q And is there a discussion among the members of that group?

A Yes.

Q There is? Regarding negotiating positions?

A Yes, there is.

Q What participation do you have in those cases?

A I have very little participation other than maybe possibly just answering a question.

Q All right. Now, after the Board establishes the labor policies who carries out the labor policies?

A You mean the contract after it's—

Q (Affirmative nod.)

A I, myself, and Mr. Spencer.

[118] Q Now, the way it goes, as I understand it, the negotiating committee negotiates with the union?

A Correct.

Q All right. And then what happens to the contract then?

A Okay. After the negotiations are completed it is all taken back to the full body of the Board. They ratify it. Then it is sent on to the union.

The agreement is put together. Then it's submitted to the employees for their ratification.

Q All right. And do those discussions regarding the labor contract show up on the minutes of the REMC?

A Yes, I'm sure that it does.

Q And the same minutes that Mary Mae Weatherman types?

A Yes, that's true.

Q You indicated that there were no confidential papers in the REMC, Mr. Dillon.

Would you have any objection to the union taking a look at the REMC negotiating statements during negotiations?

A No. Very definitely not.

Q What about Public Service Company of Indiana? Who are they?

A They are utility, a utility who supplies all of our power. We purchase all of our power from Public Service Company of Indiana.

JUDGE RIES: I don't know whether I understood that [119] question and answer. I think I misunderstood one of them.

You asked the question about the union having an objection.

MR. OBREMSKEY: Let's start all over again.

BY MR. OBREMSKEY:

Q All right. The REMC, does it establish its negotiating positions with the union in labor negotiations?

A Yes.

Q And are the status reports prepared relative to labor negotiations?

A Yes, they are.

Q And who prepares them?

A You and Mr. Krebs.

Q And are they sent to you?

A They are sent to the Executive Board. Yes, I do receive a copy of them or you present me a copy.

Q And are these the type of papers that the union, you would like to have the union get ahold of?

A Yes, I would say so. Yes.

Q You have no objection to the union getting all those status reports and labor negotiation positions?

A Yes. I would prior to our negotiations, yes.

Q I still don't understand you.

A Well, I don't understand you, either.

JUDGE RIES: Suppose the union got hold of those reports [120] you're talking about. Would you be a little peeved if they did?

MR. DILLON: I don't know as I would be peeved. It would just make—Maybe I'm not understanding you. Maybe it's the information that our Executive Board had met with Mr. Obremskey formulating as to how they had requested him to negotiate the contract, is that what you have reference to, sir?

JUDGE RIES: Well, would you object to it if the union saw that?

MR. DILLON: I wouldn't object but I would prefer that they not see it prior to our negotiations, if you put it that way. I'll be frank with you.

JUDGE RIES: How about when he sends you the status reports of how the negotiations are going? How would you feel about the union seeing those?

MR. DILLON: I don't think I would object because the status reports would have already been discussed at the meetings, at the negotiation meetings.

JUDGE RIES: Okay.

BY MR. OBREMSKEY:

Q How about reports on negotiating strategy? Would you object to the union getting ahold of that?

A That's what I thought we was talking about. That's my answer to him. As I say, that's what I have reference to or [121] that's the way I understood the question.

Q You wouldn't have any objection to the union getting ahold of the REMC negotiating strategy?

A Well, yes, I would. I mean prior to the negotiations, yes.

Q And you keep these matters in your labor negotiations file?

A Yes.

Q And where is that file kept?

A It is kept in the file behind my desk.

MR. OBREMSKEY: That's all I have.

QUESTIONS BY JUDGE RIES:

Q You mean those are parts of the minutes of meetings, is that how those documents are recorded?

A No, sir. I would say, no, they are not. They're just meetings, and what I have reference to, prior to negotiations with the labor union they will submit to us their proposals.

Q Yes.

A And then our Board of Directors meets, or our Executive Board, I should say, consisting of three people, meets with Mr. Obremskey and Mr. Krebs and they go through them and they negotiate or discuss the proposals and what we would propose.

Q And then Mr. Obremskey makes up a report on that, is that right?

A Yes. Yes, I would say he does, yes.

[122] Q And you're not sure about that?

A Yes, he does.

Q And then he sends it to the Executive Board with a copy to you?

A Yes, that is correct. Let me—I can't say whether he sends it to me. I think he usually carries it to me, and I'm not sure, I'm assuming he mails it to the Executive Board.

Q Oh. He usually carries it to you directly.

A Yes. Yes. I can't recall of him ever mailing me one.

Q And you put that in that little file next to your desk?

A Yes.

* * * *

Q And what else is in that file?
A Well, it's pertaining to the labor negotiations.
Q What else?
A Our contracts.
Q Contracts. What else?
A Make notes on what transpires at the labor negotiation meetings.
Q Your own notes on what happened?
A Yes.
Q Anything else?
A That's all I can think of at the present time.

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EXCERPTS FROM TRANSCRIPT OF PROCEEDINGS BEFORE HEARING OFFICER—
January 8, 1979

Michael W. Maier, Witness

DIRECT EXAMINATION

• • • •

[12] Q (BY MR. MUELLER:) State and spell your name, please.
A My name is Michael W. Maier, M-a-i-e-r.
MR. MUELLER: Would you please mark these Employers's Exhibits 1 throught 3?

[The above referred to documents were marked Employer's Exhibit Nos. 1(a) through (i), 2(a) through (g), and 3 for identification.)

Q (BY MR. MUELLER): Mr. Maier, what is your present position with the company?
A I am President of the company.

• • • •

[14] Q What is the nature of your business?
A We manufacture some cooking appliances and heating—wood heating appliances. We buy and sell some refrigeration appliances, water heater appliances, we manufacture stampings and do painting, plating for other people. We call that in factory sales jobbing work and

we also make castings, both malleable and gray iron for other people.

Q Do you have an approximate—if you can, an exact number of the total number of employees employed by the company?

A There about 265 in the factory now.

Q I mean total. That is employed—total number. Don't break it down at this point.

A Probably about 450.

Q Now, you indicated you have a factory. How many employees are connected with the factory as such?

A About 265.

Q Do you have any other types of operations?

A Yes, we have a foundry.

Q How many employees are employed there?

A About 100 people in the foundry.

Q And the remaining—

A Office and managerial and supervisory. Those are approximate numbers, it varies.

• • • •

[40] Q Would you give us a brief description again of the types of products you manufacture generally indictating the nature or type of customer, also in a brief form whether it is your proprietary product or one you sell under your name or not. Do you understand what I am getting at?

A Well, you are talking about the appliance area and the [41] jobbing area.

Q And foundry.

A In the appliance area, there are certain products which are proprietary, that is we engineer them, design them, get them through the Underwriter's Laboratory and manufacture and market them. Some of these products are patentable in nature, some of the products are of such that we have to worry about competitors patents. Those products are developed by our technical people who work in what we call on Engineering Department.

Q Would you, by using 1(a), indicate which Section?

A That would be Technical Services under Mr. Jim Polzin.

Q As you go through, would you interrelate it with that Exhibit 1(a)?

A Now, those products are marketed by the people in the Consumer Product Marketing Section, Section II, under Mr. Jerry Barnes. These people are responsible for selling the product. They are responsible for servicing the product. They are responsible for shipping the product. They are responsible for advertising the product.

There are some products then which we purchase and sell through that same consumer product marketing group and again we are responsible for service, we are responsible for keeping them up in the field. The important thing in the area today is the fact that we also have a tremendous responsibility to [42] the consumer in the product liability area and the so-called service problems which are handled by the people who work under Mr. Jack Klein in Section II. It is the sort of thing that involves us in lawsuits and just horrendous numbers dollarwise, and so we have to—because of the Consumer Product Safety Act, we have to be very leary about product performance in the field.

There are other types of sales which we have under Section III and the sales there are brought in the foundry area and the factory jobbing area and those are relatively competitive fields. We have a lot of competition located in this area and prices which we charge for this sort of product has to be a well guarded secret because you can lose this business very easily. It is extremely competitive. The customers which we have in this area are a matter of—that list of customers is of prime importance. The same is true in the foundry area. Those people we call Section IV, but the sales for the foundry are handled under Section III, Mr. Colligan and Mr. Horst. Mr. Horst is the foundry sales manager.

Those areas, the billing for example, for products in jobbing sales is handled under Section VII, I believe. People that work in the Cost Department and with Mr. Ehlke and Mr. Sturner and Mr. Soldner.

* * * *

[47] Q I don't think this would be redundant from the explanation you gave before, but what I would like is for you to tell us what you understand the responsibilities of these eight sections to be.

A I will make it very brief. Technical Services designs products which we sell. They specify that product, they get it through various testing laboratories, they also write product specifications and do the layout work for a product which we make for other people.

Consumer Product Marketing sells and handles all the sales transactions on products which we manufacture and sell.

Jobbing Sales bids jobs and sells the products which we make for other people to their specifications.

The foundry people make the castings.

The factory people make the parts for our products and [48] products for other people.

The Section VI, the Purchasing people buy the parts which we have to buy to put into the products.

The Controller handles the costing and financial statements under Section VII.

The Secretary-Treasurer handles the personnel things. The private payroll transactions with the banks as far as lending and borrowing money and accounts payable and accounts receivable.

Q With regard to your answers for consumer products as it relates to selling products, you said those are products that you manufacture for others or for yourself?

A For ourselves.

Q And then the Jobbing Section is selling products that you manufacture according to specifications of other people?

A That is right. That is a very distinct difference there.

Q And would you briefly explain that?

A Well, for example, if somebody came to us and said we want you to develop an oven that we want to sell and we are to develop the oven and do the development work. That would cover over Consumer Product Marketing. There is a lot of difference in product liability. We are

performing a service. In the other case we make the product and develop it and sell it.

Q Does Section I have sole responsibility for the develop- [49] ment of products that you are talking about and I mean both types of products?

A Section I develops the products but they also do service work for the jobbing sales people and their Drafting Department does layout work which goes into the Model Shop and the people in the IBEW develop the templates for production. They develop the routing sheet for job specifications.

Q In Section I, is there—do those individuals that work in Section I have access to any type of information which is not generally available to the public?

A Any new product which we are developing and bringing to the market place, they are instrumental in bringing that along. If it is patentable we try to keep that secret or quiet until such time as we can get a patent application in and they do it, all the test work for that product until we get it through any laboratory that we have to get it through, whether it is the Underwriting Laboratory or something like that.

Q Now, that type of information that you described, who under 1(b)—would all the employees or individuals listed on 1(b) have access to that type of information, and if not, say which ones.

A The people in the Drafting Department would, Mr. Kaiser works on that type of product. So does Mr. Polzin. Mr. Negarkar does, Mr. Murphy might also and he does the product [50] specification writing.

Q In regard to Section I, do the individuals that are assigned to that area or that section have access to information that is not generally available to other employees of your company?

A Well, they have access to the drawings, they have access to the performance tests. We generally don't make that information available to other people.

• • • •

[51] HEARING OFFICER: Let me ask Mr. Maier which of the technical employees in the Section I unit do you believe are confidential employees?

* * * *

THE WITNESS: That is what I have been trying to tell you. Mr. Herbst, Mr. Lehmann, Mr. Lessard, Mr. Kostolni, draw plans up for products, some of which we have patented and for products which we develop. Mr. Kaiser tests that product. [52] He also knows how that product performs. He goes to Underwriting Laboratories for us and this is very confidential information.

* * * *

[60] Q (BY MR. MUELLER:) So the record is complete, Mr. Maier, as President you have direct responsibility to the performance of those on 1(a), to these sections on 1(a)?

A I do.

Q And each one reports directly to you?

A Yes.

* * * *

Q (BY MR. MUELLER:) Within Section II, do individuals within that section without regard to being concerned as to any one individual as opposed to another have access to information that is not available to other employees of the company?

A Well, a lot of these people have information relative to who our customers are. You are talking about—

Q Identify which people you are talking about.

A Pfingsten—I will try to restrict myself to people in question.

Q The purpose of my question—don't restrict yourself—

[61] A Pfingsten, Burbach, Noordhof and Yelk. And I would say possibly Christopherson, Margaret Schmitt, Holloway, and L. Kuzniewicz.

HEARING OFFICER: Is it your testimony that other employees—generally employees do not have knowledge of who the customers are?

A That is right. For example, somebody in other areas of Section III wouldn't know who the appliance dealers are. They would have no reason to know that.

Q (BY MR. MUELLER:) What significance does knowledge of appliance dealers have as it may relate to the overall operation of your business?

A The appliance dealer and appliance jobber in the appliance business are the life blood of the business.

Q Why is that?

A Because they are the people you sell to and if somebody gets that list and concentrates on these people, they can put you out of business.

Q How would they do that?

A If somebody got into the furnace area, if somebody got the names of your best distributors, we wouldn't sell our furnaces because we would lose our market. We are talking about survival.

Q Who has access to that kind of information within Section II?

[62] A Margaret Schmitt, Holloway, Mr. Burbach, Mr. Pfingsten has some of those. I would say Mr. Christopherson would have that information in advertising.

Q In addition to customer lists, is there any other type of information which is crucial to the operation of your business in a confidential nature?

A Well, cost information, of course.

Q And cost information would be within Section VII, Mr. Ehlke?

A Yes.

Q What type of cost information?

A Production cost. Product cost, not only in the appliance area but also the jobbing area because if a —if somebody wants to take a foundry job away, all

they have to know is what it costs and they can underbid you and the job is gone.

HEARING OFFICER: Mr. Maier, return to Section VII. Can you tell me if Mr. Knoll, Wendt, Wendlandt, Soldner, Kuehn, have that type of information?

A Mr. Soldner does. I suppose Mr. Wendlandt can get that information by the computer printouts that come out. I don't know whether Anderson could or not. She runs the machine and probably could.

Q (BY MR. MUELLER:) Again the question has occurred to me as you were testifying, is to briefly describe the extent of the market within which you operate. [63] A We sell appliances in most of the states except Alaska and Hawaii. We sell castings in the central states which is Minnesota, Iowa, Illinois, Indiana, Kentucky and a little bit in Michigan. We sell stampings in Wisconsin, Minnesota, Iowa, Illinois, Ohio and probably none in Michigan.

Q Any other type of information which you think is crucial to the operation of your company?

A I could make a comment when I talk about—we are leary of customer lists. We have done work for other metal stamping houses in this area who are our competitors.

Q Could you give an example of that?

A Well, Mayville. When their blueprints come into our plant the corners with their customer name is cut off so we don't know the name of their customer. It is really important in this business.

Q Why is that?

A Because if we know who the customer is we might call and say we are making this for Mayville, why don't you buy from us. So the people keep that information.

HEARING OFFICER: I would like to ask a question. Does the competition come then because of confidential information from customers rather than product differentiation. Is it their competition—in other words, even if

your customer list got out couldn't you maintain business by selling superior products?

[64] THE WITNESS: There is a lack of product differentiation in the marketplace in certain areas and that is why patents are important and that it why customer lists are important. A good share of the success of a product is not just development of the product, but it's marketability and the people you market with. We developed a product we call Add-A-Furnace. We sell to fireplace dealers, distributors; we don't sell them worth a hoot but the people who sell the product in big volume are the people in heating and ventilating business and that's why we have been successful in that area.

Q (BY MR. MUELLER): Together with other testimony you had given, you consider the identity of those—that type of entity confidential?

A Absolutely.

Q How do you describe that type of distribution?

A We call that a distributor type of distribution and that's a heating and ventilating type.

Q And that's synonymous with—

A A customer list.

HEARING OFFICER: Mr. Mueller, can we ask if there are any other employees who have confidential information and finish up?

MR. LUKER: Alleged confidential information.

MR. MUELLER: I have been trying to paraphrase it in that sense.

[65] Q (BY MR. MUELLER:) I think I was asking that type of question. Is there any other type of information which you consider crucial?

A Well, the people—

Q To the operation of your business which you consider to be of a confidential nature and you don't, as a matter of policy, do not want to share it with your other employees, whoever they may be?

A People in our Credit Department have that information.

HEARING OFFICER: Who might that be on Exhibit No. 5?

Q (BY MR. MUELLER:) What section is that?

A Section VIII.

Q You designate that as credit type information?

A That's right. They work off the list of accounts.

Q Can you just briefly expand as you did with the others?

A Every account has their credit checked so these people have to use that information to determine whether or not they are a good credit risk and try to deal with them and try to collect money which they may owe us.

Q Is that a responsibility—looking at 1(i), which is Section VIII, is that the type of information that all those employees have access to?

A Hupke and Krause—

HEARING OFFICER: In Section VIII, only Mr. Hupke and Mr. Krause are in issue?

[66] MR. MUELLER: Hupke is a woman.

HEARING OFFICER: Sorry.

THE WITNESS: I would feel that Mr. Paris would have to testify as to Agnes Hupke.

• • • •

[86] EARL EHLKE

was called for examination by and on behalf of the Employer, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

• • • •

Q (By Mr. Mueller) What is your present position with the Company, Mr. Ehlke?

A I'm Controller of the Malleable Iron Range Company, directly responsible to the President.

• • • •

[106] Q With regard to the department within your section labeled EDP Services, would you describe the functions of that department?

A Well, that's computer area and they generally pick up off from documentation and key punch information which is injected into the computer; the computer having been programmed to run management-type reporting. And, they in turn do just that, they will function in producing not only reports but they will produce shop payroll checks; they will produce accounts payable checks; keep track of receivables. Many of the accounting functions are done in addition to running management-type reports.

Q Describe what you mean by "management-type reports"?

A Well, we could have—An example of a management-type report would be a sales costing analysis which comes off the [107] computer which tells by product line what the sales/dollars were that were received for that product, the cost and what the margins were; confidential type of information.

Q Anything else included within management-type reports?

A There would be production type of reports on where the product is in the plant. Other sales type of analysis that are made off of the computer. There are many reports that come off, I just can't think of any individual ones presently.

Q Mr. L. Wendt—Excuse me, Wendlandt, would you describe the nature, functions and responsibilities of the job that he performs?

A Mr. Wendlandt is the Assisting Manager in this section. Mr. Wendlandt will function in the absence of the manager, Mr. Hinkes; he is the Assisting Manager. He's responsible for reports that I've indicated: The inputting of the computer and everything that comes out of this area when Mr. Hinkes is not here. Now currently—Incidently he was placed Assistant in this de-

partment in June of '72, shortly after I came with the company. His additional functions—

MR. LUKER: May I interject something here. I think that the Union stipulated and we have no intention of withdrawing our stipulations by the way that this individual is a supervisor, at least my records so indicate. Maybe a quick review of the record may do it, because if that [108] stipulation is in fact true, I think it would be a waste of time to take testimony.

HEARING OFFICER: I have Mr. Wendlandt still in question.

MR. LUKER: Unless I made the mistake, since I seem to be in the minority I would assume that I made the mistake and go ahead with your questioning.

MR. MUELLER: My notes show that you desired evidence on him. Your statements, Mr. Luker, would indicate that you still want evidence on Mr. Wendlandt?

MR. LUKER: Although my records do show that we stipulated this individual as a supervisor, I now doubt those records. I think we should have testimony on that to clarify the issue.

Q (By Mr. Mueller) Mr. Ehlke, I believe you were mentioning that he assumed the responsibilities as Assistant Manager, will you again tell us when that was in point and time?

A Approximately June of 1972.

Q '72?

A '72.

Q Were you responsible for that?

A Yes, I was, about the same time I came with the company and took over the responsibility of this area.

Q What were the reasons for the promotion and what was [109] he doing before that?

A He was doing programming, I think; and, he still continues to function in that capacity also. However, to properly organize this particular department and to keep the function of the department going smoothly, it is my suggestion he be made Assistant Manager within the

area. He was to understudy much of what Mr. Hinkes was doing and was given an increase in salary along with his promotion at that time.

Q By the way, you just reminded me of a question that relates back to Miss Knoll. When she was promoted, did that also carry with it an increase in salary?

A Yes, it did.

Q Going back to Mr. Wendlandt, how is it that his being Assistant Manager makes the department run more smoothly?

A He would be responsible for the organization of work through the department. For instance, at month end there is a sequence of steps that must be gone through in terms of the computer to properly feed information into our monthly closing so that we can produce our annual statements within a reasonable length of time. The same would be true of the key punch operator. If their work was not directed, there could be a problem as to when the payrolls came off, whether they came off on the current Thursday or not. So, the work has to be directed and in Mr. Hinkes' absence, he will direct [110] it. Now, there is one other point that I would make in terms of Mr. Wendlandt at this time if I might in my testimony. Since we have made the decision to go to the Xerox computer service people in California with our data processing work, our manager in that department is deeply tied up and engrossed with getting the changeover made, so that he has turned the current computer operation, as we have known it, entirely over to Mr. Wendlandt. It's Mr. Wendlandt's responsibility to keep it going on a day-to-day basis. The month end and everything.

Q How long has he been doing that as a result of that?

A Approximately two months now I think he has had that responsibility.

Q Prior to the responsibility on a day-to-day basis to run the department because of the commitment to the changeover to Xerox—prior to that time—did the other

employees listed below Mr. Wendlandt on 1(h) look to him for assignments as to their activities and jobs that were to be performed?

A Prior to what date?

Q Prior to the time that Mr. Hinkes became involved with the Xerox matter?

A Certainly in his absence he acted as assistant in the department, they would look to him for that direction.

[111] Q Say Mr. Hinkes would be there prior to this time, would these other employees below Mr. Wendlandt look to Mr. Wendlandt, look to him for their day-to-day work assignments?

A Not if Mr. Hinkes would be there.

Q L. Anderson, is that a female or male?

A That's a female, Mrs. Anderson.

Q Would you describe Mrs. Anderson's job responsibilities?

A As indicated, she operates the computer. She takes the programs and injects the program into the computer. She takes the key punched information from the operators and puts that into the computer. She in turn produces either the management-type reports or type reports or the accounting instrument, checks invoices, what have you.

Q Are you saying that she has access to the information contained within those typed reports then?

A Oh, yes.

Q Is this information confidential in the sense of it being of a business nature at least confidential as it relates to the public?

A We certainly wouldn't want it to go public, no.

Q Would the same hold true in regard to confidentiality as it relates to other employees? I'm talking about the information within these management-type reports?

A Yes, that would be true.

Q And, why?

[112] Simply because profit type of reporting information of that nature is not something that we disseminate

among all the employees. We keep that within our own financial area.

Q Mrs. Anderson has access to that type of information?

A She does. She produces it off the computer.

Q Does the same apply to Mr. Wendlandt?

A Yes, he would have access to it.

Q Does the same apply to either Mr. Bates or should I say Mrs.?

A Mrs. Bates.

Q Miss Kurtz?

A No, neither of those apply.

Q Does Mrs. Anderson have access to any information that would be of a confidential type that relate to or is in the nature of labor relation policies?

A No.

Q Does that same answer apply to Mr. Wendlandt?

A Yes, same answer applies.

Q I'd like to note that in trying to transpose for instance information from Employer's Exhibit 2 to our exhibit, that I don't have apparently—I don't have Mrs. Bates listed on Exhibit 2 unless someone can correct me as to that.

HEARING OFFICER: Off the record.

(Discussion held off the record.)

[113] MR. MUELLER: With regard to J. Bates, in my observation that individual did not cross reference between Exhibit 1 and 2. We would add that individual as a number 32 on Exhibit 2(f) for purposes of being complete so that number 32 would be Bates J., section would be Controller VII, Department EDP, Job Title, Key Punch Operator.

HEARING OFFICER: Mr. Ehlke, what is EDP?

THE WITNESS: Electronic Data Processing.

MR. MUELLER: And, that individual Bates would fall within the previous stipulation we entered into relative to clerical employees and Exhibit 2(f) as far as the company is concerned.

HEARING OFFICER: Mr. Luker?

MR. LUKER: That's fine.

Q (By Mr. Mueller) Would you, Mr. Ehlke, for the record describe what is meant by sales costing analysis type report; what does it include, that type of thing? What does it mean, what is it?

A Well, the report would cover several areas. It would cover our appliance and product area. It would cover what we call our outside fabrication or fabrication for other customers area. It would cover our foundry area. Now, generally, the report will show in the case of the appliance area, it would show the appliance model, the number of units sold, the sales price of those units, and the cost components, such as material, labor and overhead, total cost and total [114] margin or total of gross profit on that item. The programs also develop a—Well, it will develop a percentage margin on each of the various models that are sold so that in the case of appliances, it will go down model by model by model showing the accumulation of those sales and cost factors and margin on each of those models. In the case of the fabrication or the outside fabricating area, the report is put together by customer part number, sales costs, gross profit and margin. Same would be true in the foundry.

Q Is that information—Excuse me. Does Mrs. Anderson have access to that information?

A Yes, she does. She produces those reports.

Q Does the same hold true for Mr. Wendlandt?

A Yes, it does.

Q Does the same hold true for either Bates or Kurtz?

A No, it does not.

Q Is that type of information just described considered by you to be confidential information, that of management type?

A Confidential to what extent?

Q Well, do you consider confidential information that management wants to be kept within management circles—

A Absolutely, that's true.

Q Why do you say that?

A Again, I wouldn't disseminate information of that [115] nature showing margins and gross profits and sales volumes and costs to the rest of the employees that are outside of that area.

Q The same would hold true to the public?

A The public as well.

Q I want to go through the same type of testimony with regard to what you describe as production type inputs so if you remember what I just asked you can pick it up from there or I can start you off with a question. In other words, what are they, what's included thereon?

A The production reports—and I think you have reference to those reports—control the movement of materials through the stop indicating the work centers in which they are located, et cetera. What specific question do you have in regard to that?

Q Let me note this with regard to my question in specifying what you meant by management-type reporting. My notes reflect you stated that production-type reports are such; are my notes accurate in that regard?

A In terms of confidentiality?

Q No, in terms of a management-type report being a production-type report or vice versa?

A Yes.

Q What is a production-type report?

A Well, as I indicated it indicates where things are [116] within the shop area.

Q Is that confidential-type information?

A Yes, it is to the extent that we may decide to move things around within the shop area through the production schedule.

Q It relates to the total operation of the factory or foundry?

A Yes.

Q Does Mrs. Anderson have access to that?

A Yes.

Q Mr. Wendlandt?

A Yes.

Q Bates or Kurtz?

A Neither Bates nor Kurtz.

Q Is the information on this production-type reports significant with regard to the operation of either the plant or foundry as it relates to management?

A Yes, it is.

Q And, in what way?

A Well, it's crucial to again to the movement of orders through the shop to that extent, and to the extent that management has the prerogative to move those around to one spot or another or to completion of orders to the satisfaction of customers. To that extent it's important.

Q Okay. We will now direct our attention to the Cost [117] Department, describe what the purpose or job function of that department is?

A They cost the product, they collect data within departments as to the overhead burdens that each of the departments within the shops—both factory and foundry—operate under. They arrive at burden percentages which are applied to product. They furnish costing information to the cumputer to produce the summary that we previously talked about. Generally, like all cost departments, they cost our product and determine whether we made a profit or a loss on it.

Q Describe the job responsibilities of D. Soldner?

A D. Soldner is Assistant to C. Sturner, who manages the department. Again, he functions in the absence of C. Sturner and carries out the responsibility of the department during his absence. He also is responsible in the estimating area for working up estimates for possible future work.

Q Does that estimating have anything to do with pricing?

A It's the basis on which all the prices are set.

MR. LUKER: Excuse me for just a moment. Once again the Union's records reflect that we did stipulate that Mr. Sturner is in fact a supervisor.

HEARING OFFICER: He's getting testimony on D. Soldner who works under Mr. Sturner.

MR. LUKER: I'm sorry.

[118] MR. MUELLER: The Hearing Officer's statement is correct.

Q (By Mr. Mueller) You were stating that estimating has something to do with pricing?

A That's correct.

Q And, in what way or regard?

A There is certain profit percentages which are applied to those cost tests as they are developed in that man's area.

Q Is that information considered by you to be confidential in terms of management policy as it relates to other employees and/or the public?

A Public and also other employees outside of the financial area.

Q And, why?

A Well, again it is company policy that we would not want that information available to people other than those that work on it. Simply, we wouldn't want to run the risk of having that pricing escape to our competitors.

Q Is that same type of information relating to estimating and pricing that Mr. Soldner has access to also available to L. Kuehn?

A L. Kuehn assists in terms of clerical effort in the area but to my knowledge does not see the completed costing price picture, the total picture.

Q Mr. Soldner is a male?

[119] A Yes.

Q Does Mr. Soldner have complete access to the final costing pricing report?

A Yes. As a matter of fact, he would list the suggested price on there to the sales department.

Q Does he exercise any kind of independent judgment with regard to that data in terms of the suggestions to the sales department?

A Profit—As I stated, the profit percentages are fairly well established and set by me which are applied by the gathering of the costing information. There could be certain discretion as to how that was put together.

Q And, Mr. Soldner would exercise that?

A Mr. Soldner would exercise that.

Q By exercising that responsibility, is he affecting management policy in your estimation?

A He would to the extent that profits would be affected.

* * * *

[122] Q This costing and information as it relates to a bid, that's in the process of being made? Is that the type of information that management desires to be privy only to management?

A Yes.

Q And, why?

A Again, it's only good policy that you don't make that information generally known to everybody in the organization for fear of your pricing leaking out to your competitors or be known to your competition.

* * * *

[307] MR. MUELLER: The Company calls Mr. Polzin. Whereupon,

[308] JAMES POLZIN

was called for examination by and on behalf of the Company, and, being first duly sworn, was examined and testified as follows:

HEARING OFFICER: Please state your name for the record and spell your last name.

THE WITNESS: James J. Polzin, P-o-l-z-i-n.

DIRECT EXAMINATION

Q (By Mr. Mueller) What is your present position with the company?

A I'm chief engineer of Research and Development.

* * * *

[331] Q Do any of the people within your section have access to information which you believe is confidential to either the employees and/or the public, such as information being of a business nature?

A Yes, sir.

Q And, would you give an example of that type of information?

A We are a research and development organization, so it would be information on products that are either being developed as well as products that conceivably could be patented or are patentable.

Q Any other examples that you can give of this type of information you considered confidential?

A Yes, sir. All of the engineering people are aware of what the cost is to manufacture products, and they do work [332] with the costing aspect of the corporation.

Q Why is that type of information, costing information, confidential?

A I would say it would be from a standpoint that it could be used against the corporation during labor negotiations.

Q How?

A By the Union people if they knew what our costs were on a particular product. It would be—It might even be possible to somewhat accurately determine how much a division is making if you knew what the cost of the appliances were and the number sold.

Q Would it also relate to competition?

A Yes, sir, it could.

Q And, what—In what way?

A Competition would know or could know what a particular product is costing us to manufacture. It could

conceivably set their price accordingly in the marketplace.

* * * *

[474] MR. MUELLER: Company calls Mr. Klein as their next witness.

JOHN PHILLIP KLEIN

was called for examination by and on behalf of the Employer, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Mueller) Would you state your full name for the record, please?

A John Phillip Klein.

Q You are referred to as Jack?

A I'm always referred to as Jack.

Q Your present position with the company?

A Director of Distribution, Traffic and Product Service.

* * * *

[487] Q When Miss Kuzniewicz receives customer complaints, does she have the authority to make decisions as to adjusting those complaints or resolving those complaints?

[488] A Yes.

Q Without consulting you?

A Yes.

Q What portion of her job in terms of percentages would be devoted to that type of activity, namely customer complaints?

A 60 to 70 percent.

Q Does she have access to any type of information that is of a business nature that you would consider to be confidential to either the public and/or other employees of the company?

A Yes.

Q Would you describe that?

A All shipments that leave our plant each day we tally dollar and centswise. All shipments that leave our warehouses each day is tallied, added up and added to this figure. That information is inputed to me by S. Holloway, L. Kuzniewicz and by S. Schmitt. All three have that information at their finger tips. I would consider that harmful because any time a competitor can learn how you're doing dollarwise, it would be a great help to him in damaging our reputation.

Q I'm going to identify her as Jean. Does Jean have access to any information of a business nature that you consider confidential that would not be available to either [489] Holloway or Schmitt?

A Yes.

Q What information would that be?

A Any information pertaining to a possible or an actual lawsuit for whatever reason, she would have all that information.

Q What information would that be?

A For example, we have word that some client burnt themselves badly for whatever reason. She might very possibly have that information before I do. She would then gather all documentation on it. This just happened yesterday for instance, that's why it's fresh in my mind. And, once I contact the consumer and the dealer and the salesman involved, then she in turn takes that documentation, makes copies of it and turns it over to Mr. Ehlke who is our liaison man with our insurance company. I would consider that confidential in the nature that normally M. Schmitt or S. Holloway would normally not be involved.

Q Any other type of information?

A I'm certain there is, I can't think right off the top of my head.

Q Maybe that gives me an opportunity in which to ask that we go off the record briefly. I have a phone call that I have to make to my office.

HEARING OFFICER: We'll go off the record.

[490] (A break was taken.)

(Meeting reconvened.)

Q (By Mr. Mueller) Mr. Klein, I was asking you questions relative—which were a follow up on this confidential information and asking whether there was any other type of information of a business nature that you consider confidential that Jean would have access to that would not be obtainable to Mr. Schmitt or S. Holloway?

A I remember that I stated before that all credits that are issued are processed by my department and they all go through my desk but they go through Jean's basically and initially. By "credit", I'm referring specifically to price adjustment on products, I'm referring to reimbursement for returned goods; I'm referring to stock transfers. And, we do keep a hand tally of how many credits we issue, the amount of money we are giving away literally, which I would consider to be a very confidential factor bit of information that again would be harmful to us.

Q Why is it harmful and how could it be considered confidential?

A Very logically because the bulk of the credits are written on the identical part that indicates that that particular part was a terrible weakness in our product; and, it doesn't take much imagination to see the continual [491] repetitious of issuance of credits for the same part over and over again that you have problems. Our competitors would delight to have any of this data because it helps them see why their product is made better than ours.

Q And, she has access to that?

A Yes.

Q Same as you do?

A Same as I do. Just a short time ago, Jean actually kept a running log not only on the total dollar amount of credits we were issuing but particularly what we

were issuing credit on. But, there is no way that you can control the quality of the product unless you know what is going wrong. We were logging that, we did that for a year and a half and we in turn reported it to Mr. Barnes, the amount of credits, what the credits were being issued on and why, and we had product redesign.

Q Was that a product of information out of your department?

A Yes.

Q Only your department from within this whole section?

A Yes, it was only from within the appliance division. I have no knowledge of what is defective or what isn't in parts we fabricate for other vendors, I don't know.

Q Does your department, namely Distribution, Traffic and Product Service, have access to dealership lists?

[492] A We not only have access, we have them period.

Q Who within your department besides yourself have access to that?

A M. Schmitt and L. Kuzniewicz; without them we are helpless.

Q Would you consider that type of information of a confidential nature?

A Yes.

Q Why?

A One of the hardest things to do when you bring a new product on the market is: who are you going to sell it to? And, it's not easy to obtain market research of data as to who might be conducive to buying a product on a national basis. We have all of that information wrapped up in one little book, and that is an invaluable price-list tool for anyone that wants to compete with us.

Q By access to that book which has that information, do they have access to it because of the performance of their job?

A Yes.

Q Are you familiar with the work of Mr. Pfingsten?

A Yes.

Q Do I pronounce that right?

A Yes, good.

Q Would you describe his job content, responsibilities, [493] and the like?

A His job basically is to obtain information as to what particular dealers are interested in our product in an area that is not covered by either salesmen of our own employe or our agents. Give you a specific example: Texas, if we received inquiries of dealers in Texas that would like to buy our product, we would not send a man out there. Bill would get on our watts phone and phone them and make their acquaintance over the phone—sight unseen—and possibly open up an account. Then after proper credit investigation has taken place with approval from Mr. Barnes, we might ship that particular dealer in Texas X number of our product. Then, what he does, he follows up: Did the product arrive safely? Were there any problems? Then, he follows up and asks for a reorder—a replacement order. And, he follows up too and say, "Is there anybody else in your area that might be interested in our product that might be a competitor that we won't hurt you with?" This is spreading like an octupus. We have done that in California and the deep South, and not one has ever been made by a personal call or a physical call of a salesman or agent.

* * * *

[495] Q Does he have access to any information that you consider of a confidential nature to either employees or the public?

A To the extent only that we would know what the sales volume is in the particular areas that he's covering with his watts phone.

Q How about the dealership networks that he's establishing?

A That's what I said, the areas that he has specifically [496] covered, he certainly would be privied to all

sales in those areas as well as all problems because he has to feed them by phone.

Q Is the identity of the sources of distribution of a confidential nature? I'm thinking of a specific dealer or dealers as they develop?

A Once again, we have had competitors try the same program. Whirlpool is an example and unless you have access to know what dealers you can sell under this type of program, of course, the program will fail. Our program has been reasonably successful, in fact it was very successful for quite a period of time when the market was bad.

• • • •

[517] DONALD J. DOHMANN

was called for examination by and on behalf of the Employer, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Mueller) State your full name for the record, please?

A Donald J. Dohmann.

Q Will you spell your last name?

A D-o-h-m-a-n-n.

Q M or N?

A Two N's.

Q Your present position?

A Advertising Manager.

• • • •

CROSS EXAMINATION

[By Mr. Luker:]

• • • •

[535] Q You testified that Mr. Christopherson receives a lot of phone calls from people regarding your merchandise after they have seen an advertisement; and, I believe, you testified that he may refer them to a dealer in their area; does he have a list of dealers in geographical areas? If I would call from Chicago, he

would look up and say, "Yes, there is one at such and such a street, go and see him"?

A Yes, we have that in my office.

• • • •

[566] WALTER PARIS

was called for examination by and on behalf of the Employer, and, being first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

Q (By Mr. Mueller) State your full name for the record, please?

A Walter R. Paris.

Q What is your present position with the company?

A Vice President, Treasurer/Secretary.

• • • •

[568] Q Who are Mr.—Is that a Mr. or female, M. Schwantes?

A Maryann, female.

Q What are Maryann's responsibilities?

[569] A Basically, she prepares the accounts payable paper work for submission to data processing. She acts as an assistant to Angus Hupke in Angus Hupke's absence; she does most of the duties of Angus Hupke.

Q And, what would be entailed by your description of her being an assistant to Angus Hupke? What does that entail as assistant?

A Well, they work together on accounts payable. In other words, we try to have what work Maryann prepares before data processing Angus Hupke will check over after data processing.

Q What are the job responsibilities of D. Krause; and, is that a female or male?

A Den[n]is Krause, male.

Q What are his job responsibilities?

A His job responsibilities are to assist Mr. Schwoch and specifically regularly peruses the accounts receivable ledgers to determine who should be written to, who should be phoned as far as delinquent accounts are concerned. He's also responsible for all security interests that we place on merchandise sold to various dealers. Generally, that covers quite a bit there.

Q What is the function of the Credit Department as it relates to your section; would you describe that, please?

A The Credit Department initially has to approve all new [570] orders or orders from customers whose credit has not been previously established. Once that approval is given, the order is released for normal processing. Then, the Credit Department follows up on these receivables as they become receivables to see to it that they are paid promptly.

* * * *

[571] Can I add one more duty that Mr. Krause has?

Q Yes.

A Mr. Krause has complete charge of the cash. Now, our cash comes into the company in two ways. Some cash or checks are mailed directly here to Beaver Dam in which case he physically matches the payments with the receivable records ledger. And, the other way the cash comes in is a locked box deposit system in Milwaukee. I would say that 80 to 90 percent of our cash goes to Milwaukee. The [572] vouchers are sent up and Mr. Krause matches the vouchers with the accounts receivable ledger.

* * * *

[574] Q Does his work cause him to have an interrelationship in performing that work with other people or employees of the company other than Mr. Schwoch and yourself?

A I'm not sure just what you mean by "interrelationship", but he does report to Agnus Hupke directly as to how much local cash is available for deposit to one or more banks.

Q Why to Agnus Hupke?

A Because she supervises Maryann Schwantes to make out the deposit tickets.

Q Does Mr. Krause have access to any information of a business nature which you would consider confidential in relationship to other employees of the company or to the general public?

A Well, I think the receivables—the dollar amount of our receivables and the condition of our receivables are something that I would not want to leave the company. I would not want it to be spread generally around the office. Not that we are ashamed of them, but—

Q And, is that information known only to the Credit Department, namely Schwoch and Krause, in addition to yourself?

A Generally, yes.

* * * *

[614] ARTHUR COLLIGAN

was called as a witness by and on behalf of the Employer and, having been first duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

* * * *

[615] Q (By Mr. Mueller) What is your present position with the company?

A I am a sales manager of the Industrial Division and Foundry Divisions.

* * * *

[619] Q Who is Miss Ehlke? Or is it Miss or Mrs?

A It's Mrs. Ehlke. Arlene Ehlke. She is my personal secretary.

* * * *

[620] A The only person that works in that office with me is Mrs. Ehlke. And she spends about 75 percent of her time in the office with me.

Q What is she doing—What is her job for you?

A Well, her job specifically are—is to handle with me all of the calls from our outside customers that come in, in regard to pricing or regards to—to delivery, as I said before. She keeps all of the records as far as what our costs are, how we do as far as costs are concerned. In other words, are we making any money on the parts that we're providing for our customers. She helps me quote jobs when they come in from customers, which is a big part of our business. In other words, when a person comes in and wants a job, we have to quote the job out to see that we get the right pricing for it and whether we are competitive. And so she and I together quote many jobs.

Q She participates with you in that process?

[621] A Yes.

She also takes care of seeing that the trucks that run for the Industrial Division are gotten out at the proper time. In other words, if someone wants to know when their—their stuff is read for delivery, she finds out when it's going to be ready. And then she makes a decision as to what day the trucks will deliver those parts and at what time. She sees that our trucks pick up tools and dies wherever they're made throughout the area.

Q She making independent decisions in that regard?

A Yes.

Q That are controlling on the company?

A Yes.

* * * *

[622] Q All right. Any other responsibilities she has?

A Yeah. Then she has the responsibilities of seeing when we're ordering tools—and I'm talking about dies now—that people besides ourselves buy, the customer buys tooling from—through us, and we go out and we procure that tooling. Now, at that time the two of us will sit in and decide what kind of tooling we want to get for a particular job.

Q You mean, "the two of us," you mean Mrs.—

A Mrs. Ehlke and myself.

Q Okay.

A We sit in and decide what kind of tooling has to be procured for that type of work.

Q Is anybody else participating with the two of you at that time?

A Not at that time, later—

Q Is she having eflective input with you on that progress?

A Definitely.

[623] Q And continue with—

A Okay.

Q —your description of her responsibility.

A Okay. Then what happens is we make a decision—This is the type of tooling now that we think is going to be needed to produce a part or a given number of parts. At that time we then take—and she would make out a letter going to the different companies, tool companies, that we decide that we're going to purchase these items from. And we ask those people either to come in and sit down with us—

Q Now, "us" being who?

A Mrs. Ehlke—Sit down with Mrs. Ehlke and myself. And to them go over with the tool and die people just exactly what we want to have in the way of tooling to produce the parts. At that time, then, once we made—Mrs. Ehlke and I have made that decision as to where we're going to go and buy this particular tool, we then ask the companies to present us with a formal quote for the tooling that we desire to produce the parts. Then she takes the cost of those tools and makes out a list showing the ones that we favor. If, say, we are having three or four companies quote these tools. Then she lists the ones that we most favor out of those three or four companies and tries to cut them down to the last two. Because strictly because of cost at that point.

Okay. Then at that point we now decided we're going

to [624] go to one of two companies to buy this equipment. And again I say us. Mrs. Ehlke and I decide that. Then at that point we go ahead and we say well, from your past—I say to her, from your past knowledge, which companies have done the best in regard to the quality that they've sent in, what have they done the best in delivery dates, and how does that fit into—into our line of—of delivery dates so that we can gel this whole thing together into one package.

Now, from that point on, I expect her to get that information for me so that at another date when we meet with the person who's now going to write out the purchase order for this tooling, we have this all worked out. And the person that we write out that purchase order at that time would be a Mr. Kroneberg.

Q Who decides as to which—Can we call them vendor from—Would vendor apply to the—

A Yes.

Q —the establishment that's making the quote on the tools?

A Yes, vendor.

Q Who decides which vendor to select?

A Mr. Kroneberg, Mrs. Ehlke, and myself.

* * * *

[629] Q You have access to cost information?

A Yes.

Q Does Mrs. Ehlke also have this access to that same information?

A Yes.

* * * *

[630] Q Does she have authorities to operate your section in your absence?

A Yes.

Q What would that include?

A Oh, that would include making decisions as to the—to costing, decisions in—to delivery dates, to providing people with information as to tooling costs, taking care of pricing of items. And I would say in general, running the office with regard to keeping the other

members of the group informed as to what has happened on a particular day, any phone calls that came in. She would provide our other members with that information.

Q In other words, coordinating the activity of the day or days that you're not there, together with the other members [631] who have responsibilities, so that your total effort is coordinated?

A Yes.

* * * *

CROSS EXAMINATION

[By Mr. Luker:]

* * * *

[633] Q What type of training?

A I would say taken from the number of years that she has worked with me, which has been, I think, about twelve years now, starting out with what I—knowledge I have had of tool and dies, which is very thorough. From those twelve years we, in the original years, sat down and went over dies together of every type. We went over blueprints together. We've looked and laid out blueprints. She's been in this tool and die part of it, because every time the tool and die people come into our place, she is in on every discussion. I'm talking about the people who own the tool and die companies. When they come in. And we sit down and discuss what we're going to do, what the tools are going to be made out of, what kind of tooling we're going to get. She sits on every one of those discussions.

Q You testified that she has a desk, I believe, just outside of your office.

A Yes.

Q And that she spends 75 percent of her time in your office.

A Yes.

Q Does she have a desk in your office?

* * * *

[634] A No. She uses my desk face to face with me.

* * * *

REDIRECT EXAMINATION

* * * *

[646] Q (By Mr. Mueller) In connection with—with your work relationship with Mrs. Ehlke as you explained it, is it accurate to say that you are working together, for instance, in the area, as an example, quoting prices? You are working together to determine that part of the project, and so that it can be moved on from there—

A Yes.

Q —to the next step of the—

A Yes.

Q Do you ever discuss with her management policy matters that may have been discussed or determined in your management meetings?

[647] A Some of them.

Q And what would be a reason for doing that?

A Because I think that she should know what our—our overall picture is concerned, whether we're looking for more business, whether at the particular time we've—we're pretty well loaded in certain departments, have to acquire any more work in there, whether we anticipate there's going to be price increases in the near future, what those percentages might be.

Q By price increases, you mean price increases—

A To our customers.

Q Do you consider this pricing information, costing information, of a business nature that is sensitive and confidential as to the public and the other employees of the company?

A I do.

Q And does she have access to that?

A Yes.

Q Why do you consider that confidential?

A I think it's most important that that type of a thing be held in strictest confidence because as I know and everyone that we're doing business with knows, this type of business is very competitive. And anyone with that type of information could very easily go ahead and divulge things that we wouldn't want to be known. I'm sure of that.

[648] Q Why wouldn't you want it to be known? I think that's really the point.

A You mean—

Q Why wouldn't you want someone else on the outside to know?

A Why wouldn't we want someone on the outside to know?

Q Correct.

A Because there's an awful lot of people just in this locality itself that would just love to have the type of work we're doing. And if anyone knew that, they could outbid us on some jobs very easily.

* * * *

[651] MICHAEL W. M[AIER]

was recalled as a witness by and on behalf of the Employer and, having been previously sworn, was examined and testified as follows:

DIRECT EXAMINATION

[By Mr. Mueller:]

* * * *

[660] Q You mentioned jobbing business. And I note from memory that Mr. Colligan said your company has basically been in the jobbing business for the past ten years. Is that an accurate statement?

A Yes. We're actually a company in transition. Our appliance business has not done extremely well. Competition is severe. So what we try to do is pick up outside work with [661] outside people. And it's been growing for about a ten-year period.

* * * *

[822] LARRY WENDLANDT

was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

* * * *

CROSS EXAMINATION

[825] Q (By Mr. Mueller) Mr. Wendlandt, in performing your job, you have access to certain information

or information that you're using relative to the performance of your job?

A (Nods head affirmatively.)

Q And I just have to remind you, you have to say yes because she takes everything down.

A Okay.

Q And she can't take—(nods head affirmatively)—down.

A Okay.

Q What type of information do you have access to? What kind of information do you work with?

A Payroll information, inventory, accounts payable, accounts receivable, and—yes, several other things, I'm sure.

Q Think of anything else?

A Sales analysis information. Billing information.

Q How about sales costing analysis information?

A Correct.

[826] Q Any kind of production type reports?

A Correct.

Q And all that information is at your complete disposal relative to the performance of your work? Right, wrong, or indifferent?

A In other words, do I have access to it?

Q Yes.

A Correct.

Q And ultimately that is the type of information for which Mr. Ehlke is responsible for as the comptroller?

A That's correct.

* * * *

Linda Anderson, Witness

REDIRECT EXAMINATION

* * * *

[828] Q (By Mr. Luker) Do you have—How many key punch operators in your department?

A Two full time.

Q Would these key punch operators have access to the same information you have and Mr. Wendlandt have access to?

[829] A Well, they punch up the information. But then a lot of times we have to do more things to make it into a report. I don't know how else—

Q Like what, for instance?

A Well, like every day they punch up cash or whatever we receive. You know. And to them it really doesn't amount to too much. But then—Like when I run it, I can see, like, who's paid up and who isn't.

Q Uh-hmm.

A I don't know—

Q I think that's—

A You know, I don't know—

Q Okay. That's good enough.

HEARING OFFICER: Mr. Mueller?

RECROSS-EXAMINATION

Q (By Mr. Mueller) Following that up, Mrs. Anderson, is it fair to say what you were trying to say is that the key punch operators in their access to that information, it is in disjointed fashion?

A Yes.

Q But your access is such that it all joins together, and it becomes meaningful as to whatever the report might be?

A Yes.

Q Whether it be shop payroll—In other words, you have [830] it as a whole?

A Yes, yes.

Q Relative to shop payroll. And the same would be with regard to sales costing analysis?

A (Nods head affirmatively.)

Q And you are nodding your head yes.

A Oh, yes.

Q And the same would be true for sales analysis information?

A Yes

Q And receivables?

A Yes.

Q And payables?
A Yes.

* * * *

[832] DAVID SOLDNER

was called as a witness by and on behalf of the Petitioner and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Thank you.

DIRECT EXAMINATION

Q (By Mr. Luker) Mr. Soldner, would you state your name and spell it for the record, please?
A David Soldner. That's S-o-l-d-n-e-r.
Q Are you employed by Monarch Range?
A Yes.
Q How long have you been in their employment?
A Seventeen years.
Q What department do you work in, sir?
A Cost department.
Q How long have you been in that particular department?
A About eight years.
Q What do you do in the cost department, Mr. Soldner?

* * * *

[833] A Costing range parts, factory sales parts, and foundry parts.
Q You ever attend management meetings?
A Yes.
Q In what capacity?
A As cost accountant.
Q What's your input?
A Costing of various products and what certain items might [834] cost.
Q How often would you attend these meetings, Mr. Soldner?
A Oh, I would say it would vary. Maybe a couple times a month.

Q Who would be in attendance in these meetings?

A Mostly Earl Ehlke or Clyde Sterner and myself, and Miss Maier.

CROSS EXAMINATION

[By Mr. Mueller:]

* * * *

[837] Q When you prepare this shipping memo, does it show on there or do you indicate on there what it costs to make that part?

A No.

Q Do you have access to that type of information, what it costs to make that part?

A Yes, uh-hmm.

Well, I should restate that. There's a cost code that goes on this invoice. The cost doesn't actually show on the shipping memo. But this cost code, then, is related back to the cost of the part.

Q And you have access to that cost—

A Yes.

Q —information?

Where do you get that information, the cost information?

A Off our cost sheets. We actually cost the parts from the actual cost.

Q So that with the—in the performance of your job, you're able to know and you do know what it's costing the company to make a particular product?

A Yes.

Q Or part, as you call it?

[838] A Yes.

Q And also the price that the company's charging the customer?

A Yes.

Q And which customer it is?

A Uh-hmm.

Q Do you work with monthly reports with showing the summaries of manufacturing sales and costs?

A Yes. With the factory sales report.

Q Would you describe what that is?

A That shows the total amount of sales for a given customer and the total cost and the percentage mark-ups.

Q Is that summary, then, on a monthly basis?

A Yes.

Q Is this a necessary part of your job to have that?

A Yes.

Q Or why or how, in what way?

A When we prepare it for management through the IBM system.

Q In other words, is it proper to say that you retrieve that information from the computer and then prepare a report for management for review?

A Yeah. It is actually prepared through the computer from these cost numbers that we give them against our costs and selling price.

Q So—

[839] A But I check it then and send it back to the computer if there's any errors for the month. And then they return it, and then it's given out to management.

Q By management you mean it could include, like, Mr. Maier?

A Right.

Q Mr. Ehlke?

A Yes.

Q Do you know who else gets those?

A Art Colligan. And I really don't know who else gets all of them.

Q Am I to understand from what you are saying with regard to these monthly reports, that it is your responsibility to prepare those?

A In a sense that I give the IBM—the code numbers for the cost and the selling prices. The actual computer itself does the printing of this report.

Q And then check the printout?

A That's right, check the printout for mistakes, right.

• • • •

[849] DENNIS KRAUSE

was called as a witness by and on behalf of the Petitioner, and, having been first duly sworn, was examined and testified as follows:

HEARING OFFICER: Thank you.

DIRECT EXAMINATION

Q (By Mr. Luker) Would you state your name?
A Dennis Krause, K-r-a-u-s-e.
Q Where are you currently employed, Mr. Krause?
A Monarch Range Company.
Q How long have you worked for Monarch Range?
A Approximately fifteen and a half years.
Q What department do you work in?
A Presently credit department.

* * * *

CROSS EXAMINATION

[By Mr. Mueller:]

* * * *

[854] Q Going back to these floor plans, as you call them, relating to the secured interest. Does—Is that your responsibility, a major part of your responsibility?
A Well, I record them on our records up there.
Q And does that give you access to which customers have a—an interest owing to the company?
A Yes.
Q And the amounts?
A Yes.
Q What other type of information do you have access to relative to the credit?
A I don't think anything that's in regards to—receivables, I imagine. Account receivables.
Q Does that identify customers?
A Yes, identifies customers, amounts they—
Q Any other form or fashion relative to accounts receivables, any other thing indicated other than what they owe and their name?
A Such as what?
Q That's what I'm asking. That's what I'm asking. If the access to the accounts receivables gives you any information [855] other than the customer and the amount they owe.
A Yes, I—I know—I know their account, what they owe, the invoices what they owe on, the money that they pay on it.

Q As they pay it?

A As they pay it, yes.

Q You have responsibility to the receipt of the cash? Correct?

A Right.

Q As it's received by the company?

A Yes.

Q And the recording of it?

A Right. On their receivable part.

Q Any other responsibilities relative to cash that's received by the company?

A It's generally mostly the receivable part. I do add any miscellaneous receipts that come in on the tape so we have a daily tape total. Other than that, that's usually taken care of by another person.

Q So at the end of each day you know, because of the work you are doing for the credit department and the company, how much the company has taken in in terms of cash because of the tape total?

A Yes.

Q Is that ever compiled for summary report by your department?

[856] A No. That's handled in another division or another section. Another person takes care of the totaling and recording of it.

Q Who's that?

A Maryanne Schwanz (phonetic).

* * * *

REDIRECT EXAMINATION

* * * *

[858] Q Okay. You testified that you compile the cash figures as a—you know, on a daily basis, I believe.

A Uh-humm.

Q Does the—all the cash owing to Monarch Range come in directly to Beaver Dam?

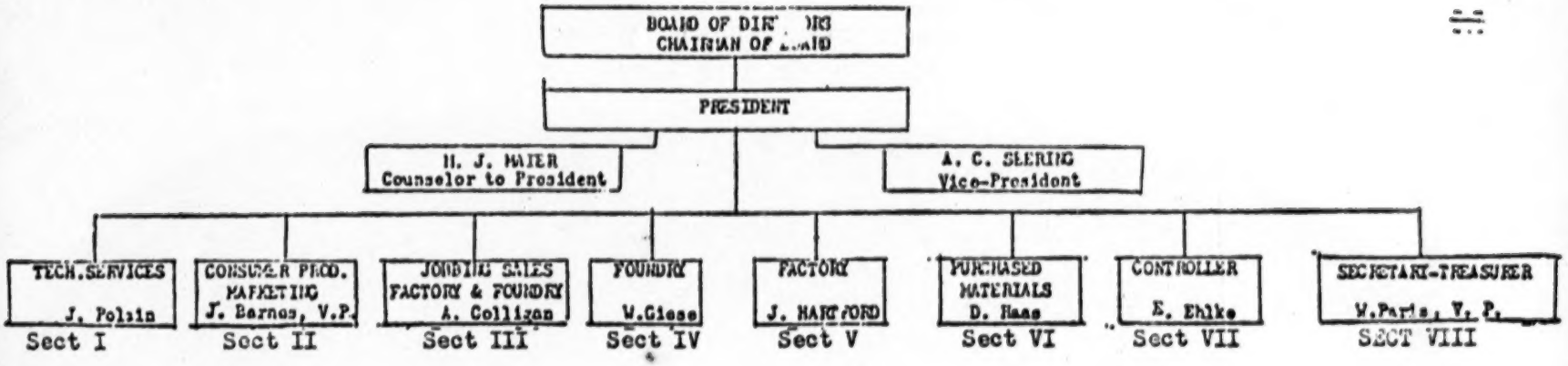
A No. Some of it comes into a lock box in Milwaukee.

Q What do you get from that Milwaukee location?

A Just the envelopes and receipt and amount that each customer paid on it.

Q How often do you get this?

A Daily.



NATIONAL LABOR RELATIONS BOARD

Docket No. 20-RC-3492 OFFICIAL EXHIBIT NO. Employer #1 - 16

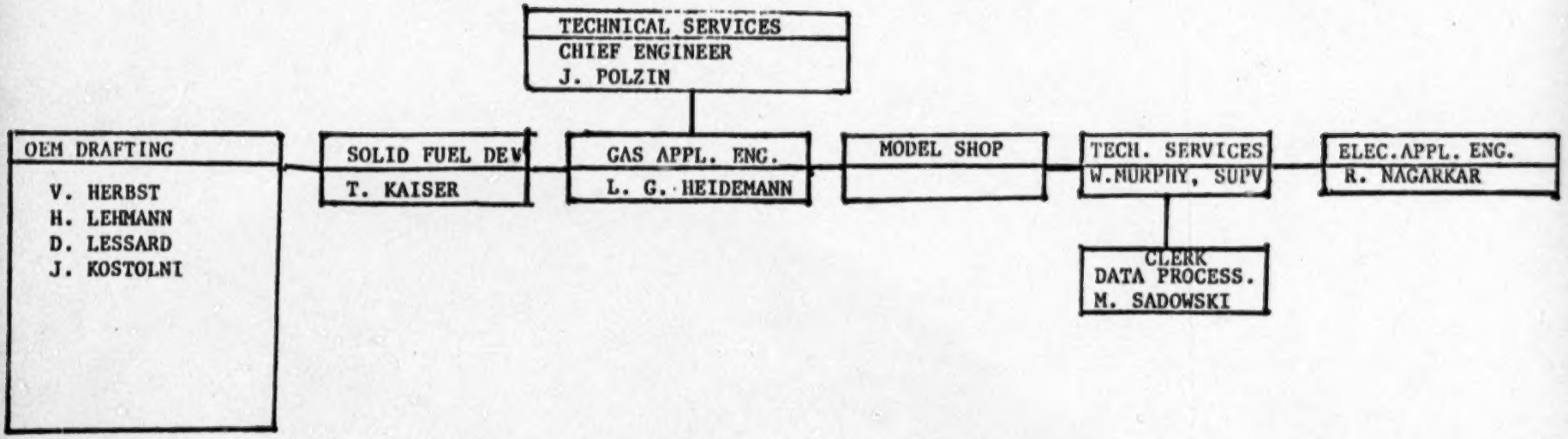
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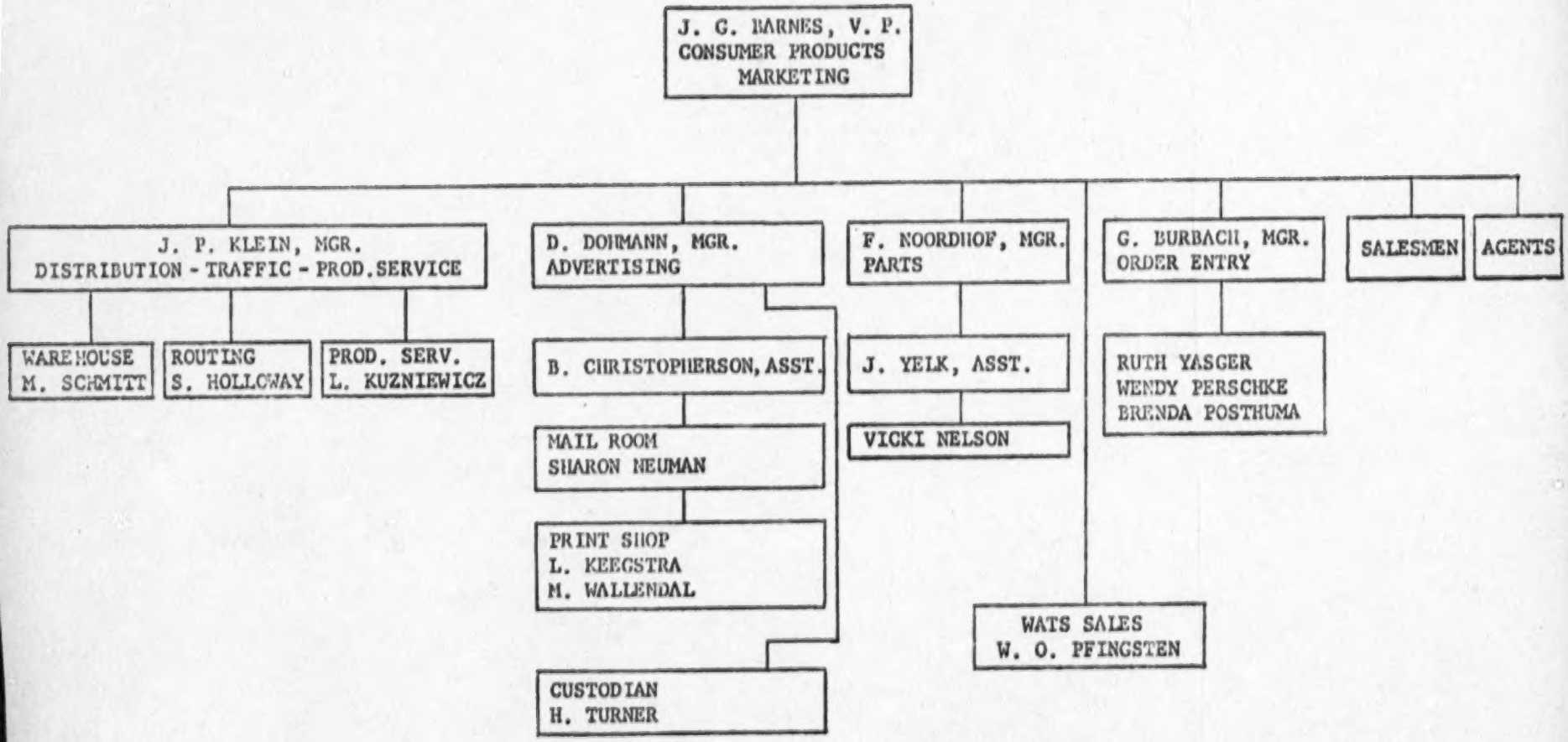
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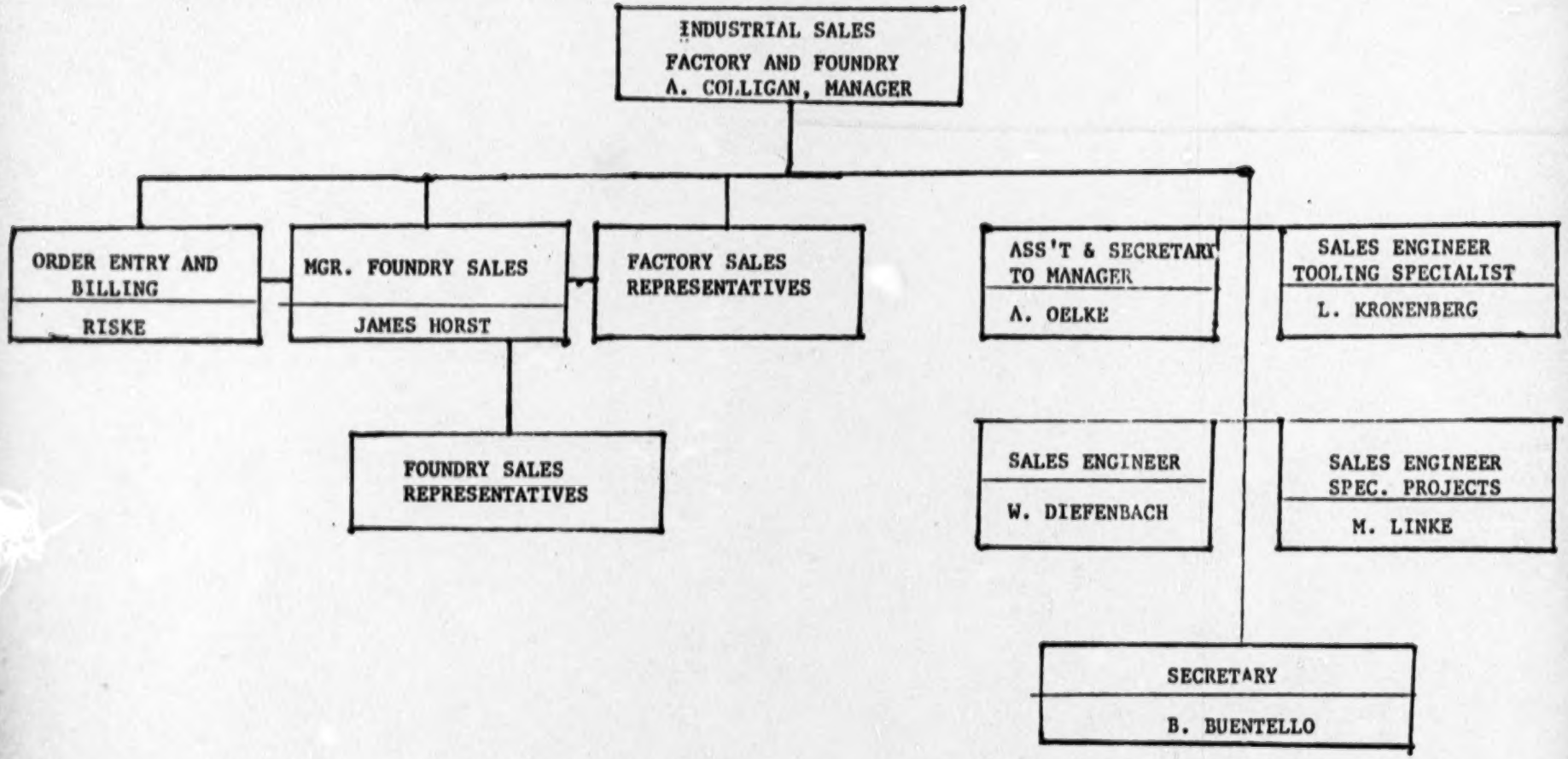
SECTION I


TECHNICAL SERVICES
CHIEF ENGINEER
J. POLZIN
OEM DRAFTING
V. HERBST
H. LEHMANN
D. LESSARD
J. KOSTOLNI
SOLID FUEL DEV
T. KAISER
GAS APPL. ENG.
L. G. HEIDEMANN
MODEL SHOP
TECH. SERVICES
W.MURPHY, SUPV
ELEC.APPL. ENG.
R. NAGARKAR
CLERK
DATA PROCESS.
M. SADOWSKI

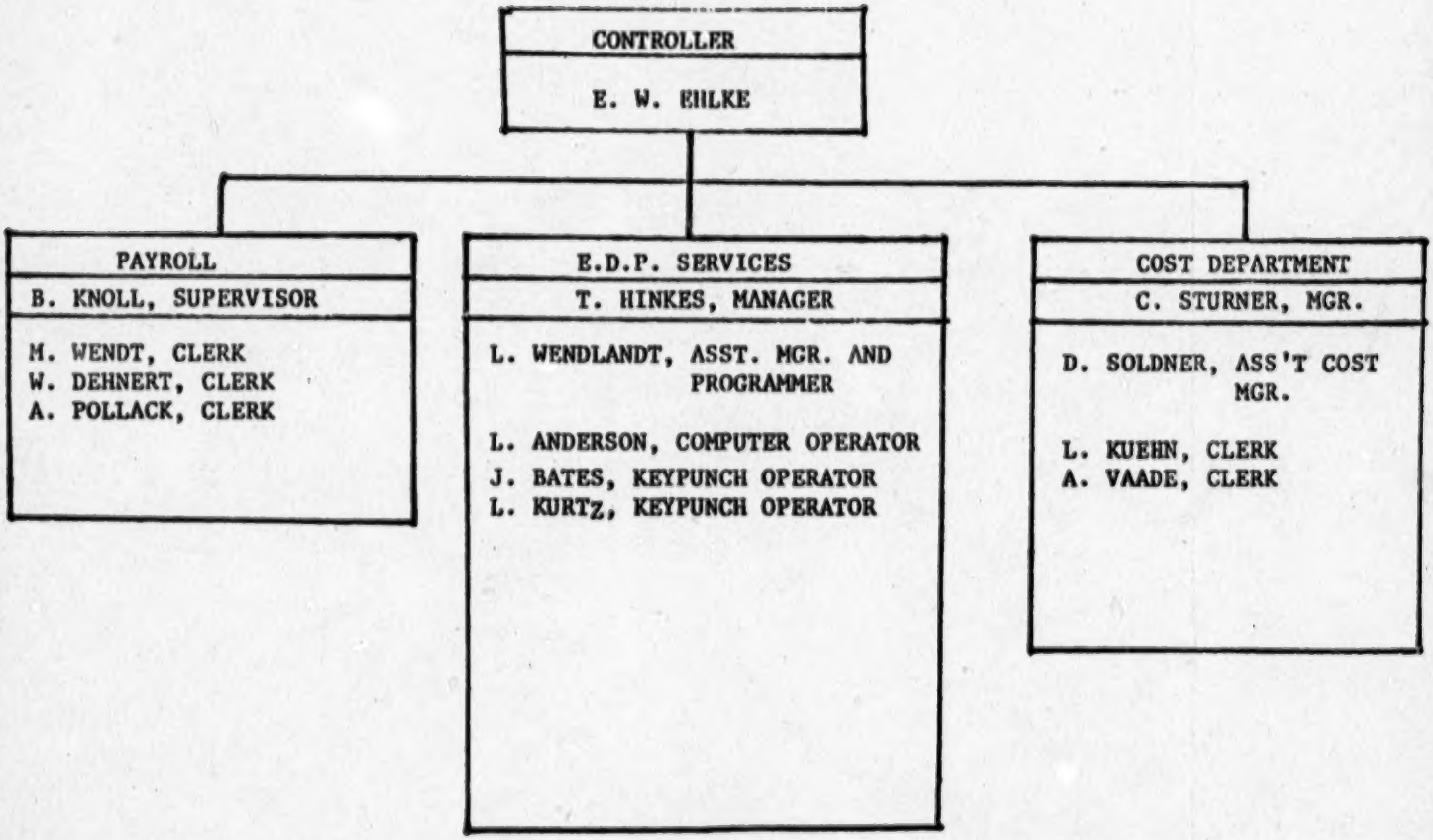
SECTION II


J. G. BARNES, V. P.
CONSUMER PRODUCTS
MARKETING
J. P. KLEIN, MGR.
DISTRIBUTION - TRAFFIC - PROD.SERVICE
D. DOHMANN, MGR.
ADVERTISING
F. NOORDHOF, MGR.
PARTS
G. BURBACH, MGR.
ORDER ENTRY
SALESMEN
AGENTS
WAREHOUSE
M. SCHMITT
ROUTING
S. HOLLOWAY
PROD. SERV.
L. KUZNIEWICZ
B. CHRISTOPHERSON, ASST.
J. YELK, ASST.
RUTH YASGER
WENDY PERSCHKE
BRENDA POSTHUMA
MAIL ROOM
SHARON NEUMAN
VICKI NELSON
PRINT SHOP
L. KEEGSTRA
M. WALLENDAL
WATS SALES
W. O. PFINGSTEN
CUSTODIAN
H. TURNER

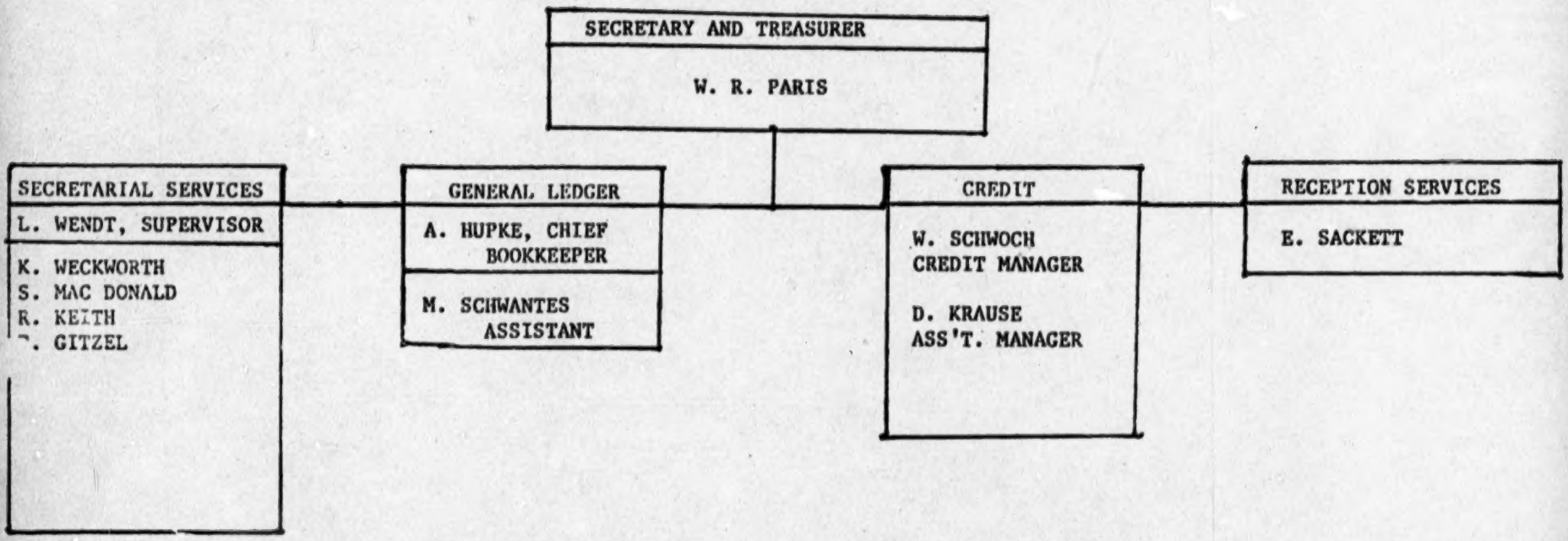
SECTION III


INDUSTRIAL SALES
FACTORY AND FOUNDRY
A. COLLIGAN, MANAGER
ORDER ENTRY AND BILLING
RISKE
MGR. FOUNDRY SALES
JAMES HORST
FACTORY SALES REPRESENTATIVES
ASS'T & SECRETARY TO MANAGER
A. OELKE
SALES ENGINEER TOOLING SPECIALIST
L. KRONENBERG
FOUNDRY SALES REPRESENTATIVES
SALES ENGINEER
W. DIEFENBACH
SALES ENGINEER SPEC. PROJECTS
M. LINKE
SECRETARY
B. BUENTELLO

SECTION VII


CONTROLLER
E. W. EHLKE
PAYROLL
B. KNOLL, SUPERVISOR
M. WENDT, CLERK
W. DEHNERT, CLERK
A. POLLACK, CLERK
E.D.P. SERVICES
T. HINKES, MANAGER
L. WENDLANDT, ASST. MGR. AND PROGRAMMER
L. ANDERSON, COMPUTER OPERATOR
J. BATES, KEYPUNCH OPERATOR
L. KURTZ, KEYPUNCH OPERATOR
COST DEPARTMENT
C. STURNER, MGR.
D. SOLDNER, ASS'T COST MGR.
L. KUEHN, CLERK
A. VAADE, CLERK

SECTION VIII



SUPREME COURT OF THE UNITED STATES

No. 80-885

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION

and

NATIONAL LABOR RELATIONS BOARD, PETITIONER

v.

MALLEABLE IRON RAN[GE] COMPANY

ORDER ALLOWING CERTIORARI. Filed March 2, 1981

The petition herein for a writ of certiorari to the United States Court of Appeals for the Seventh Circuit is granted. The case is consolidated with case No. 80-1103, Hendricks County Rural Electric Membership Corporation v. National Labor Relations Board, and a total of one hour is allotted for oral argument.

SUPREME COURT OF THE UNITED STATES

No. 80-1103

HENDRICKS COUNTY RURAL ELECTRIC MEMBERSHIP CORPORATION, PETITIONER

v.

NATIONAL LABOR RELATIONS BOARD

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